

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU : CRIMINAL TERM PART 80

-----X
THE PEOPLE OF THE STATE OF NEW YORK, : Indictment
: No. 2415N/08
-against- :
: Sex Abuse 1.
HAROLD GOPAUL, :
: Defendant. : Huntley/Mapp
-----X : Hearings

April 30, 2009

252 Old Country Road
Mineola, New York

B E F O R E:

HONORABLE JAMES P. McCORMACK,
Acting Supreme Court Justice

A P P E A R A N C E S:

HON. KATHLEEN M. RICE
Nassau County District Attorney
For the People
BY: JAMIE JOHNSON, ESQ.,
Assistant District Attorney
of Counsel.

DONALD R. SCHECHTER, ESQ.
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* * *

WENDY SILAS
Senior Court Reporter

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1 THE CLERK: Case is on for hearing, People of
2 the State of New York against Harold Gopaul,
3 Indictment 2415N of 2008.

4 Counsel?

5 MS. JOHNSON: Good afternoon, Judge.

6 For the People, Jamie Johnson.

7 MR. SCHECHTER: On behalf of the defendant,
8 Harold Gopaul, Donald R. Schechter, 80-02 Kew Gardens
9 Road, Kew Gardens, New York.

10 THE COURT: Good afternoon.

11 This matter has been sent to me by
12 Judge Donnino for purposes of hearing and I think
13 ultimately trial.

14 I see that as a result of the decision by
15 Judge Calabrese this is a Mapp/Huntley Hearing?

16 MS. JOHNSON: Correct, Judge.

17 THE COURT: Mr. Schechter, that's your
18 understanding as well.

19 MR. SCHECHTER: Combined Mapp/Huntley, yes,
20 Judge.

21 THE COURT: All right, now, People you
22 indicate that you have some witnesses, police
23 personnel, from New York City?

24 MS. JOHNSON: Yes, Judge. The hearing for
25 the Huntley/Mapp issues involves two witnesses.

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1 The first is Detective Schulman of the NYPD,
2 he is here today.

3 And, second, is a uniformed police officer,
4 Officer Alfaro. She was unavailable for today. I do
5 not anticipate, as it is now 3:15, finishing with
6 Detective Schulman today.

7 I did step outside to speak with him. There
8 are some issues with having NYPD officers come here on
9 their days off. He does have child care issues
10 tomorrow, your Honor. I asked him if he would be
11 available, come tomorrow, for continuation. He said
12 due to personal child care issues he would not be.

13 THE COURT: Who is this that we're referring
14 to?

15 MS. JOHNSON: Detective Schulman, who is here
16 today.

17 I did send a teletype already for tomorrow
18 for the uniformed officer, so if we have to finish with
19 Detective Schulman another day and go a little bit out
20 of order and continue with the uniformed officer
21 tomorrow, I anticipate being able to do that.

22 I have not heard anything from the 105
23 command that the uniform officer would be unable to
24 come tomorrow. Last I heard she would be available and
25 she has been teletyped for 9 o'clock tomorrow morning.

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1 THE COURT: So there's two witnesses for the
2 hearing?

3 MS. JOHNSON: Yes.

4 THE COURT: Detective Schulman and a --

5 MS. JOHNSON: Officer Alfaro.

6 THE COURT: And Schulman has an issue with
7 regard to child care tomorrow and the other officer has
8 been teletyped to be here for tomorrow.

9 MS. JOHNSON: She's been teletyped for
10 9 o'clock tomorrow and I haven't -- we confirmed that
11 the 105 received the teletype. I haven't heard any
12 problems or conflicts and this was as of this morning.

13 THE COURT: Okay.

14 MR. SCHECHTER: If it please the Court, there
15 are a few issues I have of my own.

16 Firstly, I understand that counsel is
17 indicating that my client allegedly executed a consent
18 to search document.

19 I had made discovery application requesting
20 any and all such information and I never received
21 copies of consent to search whatsoever.

22 As a matter of fact, in the discovery
23 applications counsel claimed that the search was an
24 open view, did not claim in the discovery materials
25 that my client executed a consent to search.

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1 If the Court will peruse the District
2 Attorney's answer, I think it's devoid of any mention
3 my client executed a consent to search form, unless I'm
4 mistaken.

5 That's the first initial issue, Judge.

6 (Pause in the proceedings.)

7 THE COURT: All right, how many consent forms
8 are there?

9 MS. JOHNSON: Two, Judge, one with regard to
10 searching of the residence and one with regard to
11 searching of the vehicle.

12 So your Honor knows, today was the first time
13 I had been provided that paperwork as it was with city
14 detective's case jacket. So I did provide that in the
15 Rosario material.

16 MR. SCHECHTER: I don't think, really, that's
17 an issue for a Rosario matter, I think that's a
18 discovery matter, so I respectfully --

19 THE COURT: Now that you have the consent
20 form, is there some way in which you've been prejudiced
21 by receiving it today as opposed to having received it
22 at some other point?

23 MR. SCHECHTER: Certainly, your Honor.

24 That belies the People's bill of particulars.
25 I respectfully submit if the People, in the bill of

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1 particulars, allege that the issue at this hearing is
2 whether or not the officer acted and seized the
3 information -- seized the alleged evidence in plain
4 view, that was what was prepared for this hearing.

5 As a matter of fact, I submit that's the
6 purpose of a bill of particulars; for the People to
7 specify the particulars of the case that we are dealing
8 with and that is how defense counsel prepares the case.

9 Now, on the eve of the hearing, for the first
10 time, I am given these consent documents which I had
11 absolutely no knowledge of from the District Attorney
12 and I submit that she should be confined to the
13 parameters of the four corners of her bill of
14 particulars, which is what she sent me, which is that
15 the issue here is whether or not the items seized by
16 the officer, not this officer, another officer, a
17 female officer who will be testifying, I guess,
18 tomorrow, whether, in fact, that evidence was seized
19 because it was in open view.

20 I direct your Honor's attention to counsel's
21 bill of particulars and her response to discovery,
22 namely Page 5.

23 THE COURT: Page 5 of what?

24 MR. SCHECHTER: Of affirmation in opposition
25 to defendant's omnibus motion dated February 5, 2009.

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1 All counsel spoke about was her opposition to the
2 motion because standing was not alleged.

3 Then she says on Page 6, "In the alternative,
4 the People submit that the seizure of the physical
5 evidence from the car without a search warrant was
6 justified because the property was in plain view of the
7 officers as follows: Police Officer Celica Alfaro
8 observed the defendant's vehicle and inside said
9 vehicle the officer observed the meat cleaver/knife and
10 a massager. Police Officer Alfaro recovered said items
11 from the vehicle."

12 There is absolutely no mention or no setting
13 forth here that the basis that she is claiming the
14 legality of the search is a signed consent to search.
15 There's nothing in her pleadings to say that, Judge,
16 and that's the purpose of a bill of particulars.

17 Does the Court have --

18 THE COURT: I have your -- I have the
19 People's response to the discovery demand, which I take
20 it there was another attorney prior to yourself,
21 Mr. Schechter?

22 MR. SCHECHTER: Your Honor, there was a prior
23 attorney which made motions which were insufficient and
24 I was given the right to make my own omnibus motions
25 which I, in fact, did.

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1 However, the response of the People
2 replicates the same allocations concerning the bill of
3 particulars as to the justification of the search.

4 THE COURT: All right, so, People, there was
5 a search of the defendant's vehicle?

6 MR. SCHECHTER: And home.

7 MS. JOHNSON: There was a search of the
8 vehicle and a search of the home, which I believe -- as
9 to notice, I believe that counsel was provided them
10 from the Queens District Attorney's Office, Judge, and
11 I believe a copy of the property vouchers were turned
12 over in discovery to both attorneys.

13 So I'm just looking for those now because I
14 believe --

15 MR. SCHECHTER: No, never got the vouchers
16 and I was never given a justification for the search
17 with respect to this.

18 This is counsel's bill of particulars in
19 Nassau County. Queens and Nassau are not contiguous.
20 What the DA in Nassau -- in Queens does not bind with
21 the District Attorney in Nassau.

22 MS. JOHNSON: Since we are prior to the trial
23 and start of any hearing, we would make a motion to
24 amend our bill of particulars orally and in our
25 continuing duty to disclose any property or anything

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1 under 240.20, we are not only relying upon the consent
2 form, but we are also relying on the property that was
3 recovered in plain view.

4 Obviously, you know, it's up to your Honor if
5 counsel is going to be given the right to re-argue
6 whether or not his client has standing, but, either
7 way, we are prepared to litigate all aspects of not
8 only the consent, but the plain view part of the
9 search.

10 MR. SCHECHTER: People can't have it both
11 ways, your Honor.

12 They said that they were ready. They claimed
13 they were ready. They made this application telling
14 the judge they are ready. As such, the bill of
15 particulars becomes fixed.

16 There are time constraints on the defendant
17 as well. The time constraints -- there are time
18 constraints on the defendant as well.

19 THE COURT: I don't have your papers.
20 There's a lot of papers in front of me between your
21 papers, the prior attorney's papers, the People's
22 responses.

23 As to whether or not you had demanded copies
24 of any consent searches --

25 MR. SCHECHTER: Any what?

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1 THE COURT: Consent search forms?

2 MR. SCHECHTER: Your Honor, you're presuming
3 I would know about them.

4 It's part of their duty to provide me that in
5 discovery.

6 THE COURT: It gets back to my initial
7 question.

8 How are you and your client prejudiced at
9 this point since we're only conducting a pretrial
10 hearing with regard to these suppression issues?

11 MR. SCHECHTER: Because, your Honor, we are
12 required under the law to provide our motions within a
13 certain period of time and the People --

14 THE COURT: I understand.

15 You've now been apprised of the consent
16 searches, the manner in which these searches were
17 conducted. You're now about to begin the hearings in
18 this matter.

19 Could you articulate to me as to how you
20 would be prejudiced or foreclosed from litigating the
21 issue as to whether or not your client validly executed
22 a consent to search for his vehicle or for his car?

23 What's the remedy?

24 What are you asking me to do?

25 MR. SCHECHTER: Preclude. I'm asking the

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1 Court to direct that the District Attorney proceed on
2 the basis of plain view; that, in fact, that the theory
3 that she proffered and the justification for the search
4 proffered in her bill of particulars is what she's
5 bound by.

6 That's the purpose of a bill of particulars.
7 Otherwise, it would render a bill of particulars
8 virtually meaningless and I ask that the People be held
9 to the proof that they claimed that they had, namely --

10 THE COURT: Could you show me your bill of
11 particulars?

12 I am looking at your discovery demand, which
13 didn't ask for any of the items you're claiming you
14 want to have precluded now, or at least the consent
15 searches.

16 MR. SCHECHTER: Let me get a copy of my
17 demand, Judge.

18 Your Honor, the motions were made in response
19 to the People's representations with respect to how the
20 search occurred. They never, ever gave us any notice
21 that there was a consent form, never in any of the
22 VDFs, nothing.

23 THE COURT: All right, so you've gotten the
24 hearing, you've now been apprised as to the manner in
25 which the property was recovered.

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1 MR. SCHECHTER: And I'm respectfully asking
2 that the Court make a determination.

3 THE COURT: Well, you first asked to have the
4 items precluded.

5 Now it seems to be that you're acknowledging
6 that you didn't ask for those items in your demand.

7 MR. SCHECHTER: Well, I'm asking for a
8 hearing --

9 THE COURT: Now you're shifting your argument
10 to, well, now, because they didn't mention it in their
11 motion papers, that therefore they should be precluded
12 as well?

13 MR. SCHECHTER: What I'm saying, your Honor,
14 is the District Attorney, in their response to my
15 motion papers, specified a theory, specified the basis,
16 the justification, for the search. They did that.
17 They did that sua sponte.

18 As such, they proffered the theory that they
19 were proceeding under and that is an open view theory,
20 okay?

21 Now, right before we start the hearing, they
22 say, "No, I'm changing the theory. Now I'm going to
23 claim it was consensual."

24 I'm saying, of course, it's a surprise, but
25 not only is it a surprise, they posited what they did

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1 in a bill of particulars and I'm saying they're
2 required to present the theory specified in the bill of
3 particulars.

4 That's my application, judge.

5 THE COURT: All right, I'll reserve decision
6 on your application at this time.

7 Anything else we need to address?

8 MR. SCHECHTER: Yes, Judge.

9 I've provided counsel with a list of forms
10 that I noticed was not included in the Rosario
11 material.

12 For example, there are prepared, to my
13 understanding in the normal course of police arrests,
14 documents that have not been provided and I will list
15 them the same as I gave the District Attorney.

16 One is an activity log.

17 Two might be provided, I haven't had a chance
18 to look through the documentation, is a complaint
19 report. The document is PD 313-152. That's a
20 complaint report.

21 The other document I did not receive is a
22 New York State standardized domestic incident report
23 with the form numbers DCJS 3221 and a report of
24 suspected child abuse PD 377-1544.

25 He is a mandatory reporter. He was supposed

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1 to make those -- do those documents.

2 His report to his patrol supervisor, I did
3 not get that.

4 The domestic report incident log, I did not
5 get that either.

6 Now, I don't know if there was an on-line
7 booking system arrest work sheet, but, if there was,
8 I'm entitled to that.

9 And, lastly - I have asked for this on
10 several occasions and it has been granted because it's
11 required - the commanding officer of the precinct,
12 under certain circumstances, makes a request for a
13 recommendation for commendation which contains within
14 that request the statements and comments of the
15 arresting officer as to the incidents.

16 I am requesting that a copy of that
17 recommendation for a commendation, if such form exists.

18 THE COURT: All right, Ms. Johnson?

19 MS. JOHNSON: Your Honor, with regards to
20 most of those documents that counsel had requested, a
21 lot of it is not Rosario material for hearing purposes.

22 Let me start -- I mean, the complaint report
23 is a narrative of the detective's conversation with the
24 victim.

25 It has nothing to do with the defendant's

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1 statement. It has nothing to do with any of the
2 property. It has nothing to do with any conversations
3 that a detective had with the defendant.

4 It's similar to our 32Bs here, except they
5 don't do actual 32Bs in the city.

6 As to the domestic incident report, again,
7 that is certainly Rosario for trial, but is not a
8 written recorded statement about the detective's
9 conversation with the defendant.

10 Same thing with the domestic report incident
11 log, the report of suspected child abuse.

12 I have protective services reports here and
13 I've gone through them. I'm happy to show your Honor
14 what I have. Everything that is listed in this
15 paperwork that is in the detective's case jacket is not
16 about the substance of his testimony at this hearing.

17 What I've turned over is everything that the
18 defendant (sic) has memorialized in regards to his
19 contact with the defendant, his conversations with the
20 defendant, nothing about his contact with the
21 complainant as there is no Dunaway or probable cause
22 aspect to the hearing.

23 But I'm happy -- if your Honor would like to
24 review any of this in camera, I have it to review.

25 THE COURT: I'll take a look at the material

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1 in camera, Mr. Schechter.

2 Whatever you want to explore for purposes of
3 cross-examination as to these documents, as to whether
4 or not they have some bearing or would be considered
5 Rosario for purposes of the hearing, I'll certainly
6 give you leeway to do that.

7 MR. SCHECHTER: Thank you, Judge.

8 THE COURT: All right, anything else?

9 MR. SCHECHTER: Well, I have no problem with
10 the People beginning their direct examination, your
11 Honor.

12 However, since, as -- it seems to be the law
13 and the inclination of most prosecutors, I have just
14 been given a pile of papers which are alleged to be
15 Rosario material.

16 Therefore, I would like my cross-examination
17 of the detective to be reserved for when I have an
18 opportunity to peruse them, which would be, if not
19 tomorrow, then I guess Monday.

20 MS. JOHNSON: Judge, considering the video is
21 20 minutes to a half hour, I don't think we're getting
22 there anyway.

23 THE COURT: It will appear you'll get your
24 request.

25 MR. SCHECHTER: Thank you, Judge.

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1 MS. JOHNSON: There were two packets turned
2 over to the Court and counsel, one with a Rosario cover
3 sheet and the other one is the grand jury minutes of
4 the detective, so I just want to make counsel
5 acknowledges receipt of both of those.

6 MR. SCHECHTER: Let me hear this again,
7 please?

8 MS. JOHNSON: Other than the packet, there
9 was a separate packet that was the detective's Queens
10 County grand jury testimony.

11 I want to make sure you got both of them.

12 MR. SCHECHTER: I have the grand jury
13 testimony regarding -- part of what I was given was
14 crossed out, so I don't know what that relates to.

15 So with respect to the grand jury testimony,
16 absent what was contained that was crossed out on one
17 of the -- on one, two, three -- three pages, I was
18 given what appears to be the grand jury testimony from
19 Queens.

20 MS. JOHNSON: Your Honor, what's crossed out
21 is colloquy between a question from the grand jury and
22 the Queens ADA. All the testimony is there.

23 So if your Honor would like to see what was
24 redacted, I have that for the Court as well.

25 MR. SCHECHTER: Your Honor, I've been doing

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1 this a long time. It's the first time I've ever seen
2 colloquy in a grand jury redacted from grand jury
3 minutes.

4 THE COURT: Can I ask you what we're talking
5 about, because you people have been dealing with this
6 case for the last umpteen months. I got it a half hour
7 ago, so -- this is grand jury testimony of whom?

8 MS. JOHNSON: Detective Schulman.

9 THE COURT: In the Queens grand jury?

10 MS. JOHNSON: Yes, Judge.

11 That is an original marked-out copy, so you
12 can actually see through the black ink what was written
13 there. It's on the last couple of pages.

14 (Shown to Court.)

15 THE COURT: And this is what pertains to the
16 detective's interactions with the complainant?

17 MS. JOHNSON: No, it's not his testimony.

18 It's a question posed by the grand jury to
19 the prosecutor which the prosecutor then asked. The
20 actual part redacted is a grand juror's testimony.

21 THE COURT: In other words, it's colloquy
22 between the DA in Queens and the grand juror?

23 MS. JOHNSON: Correct.

24 THE COURT: All right, Mr. Schechter, that
25 does seem to be the case.

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1 MR. SCHECHTER: I understand that, your
2 Honor. However, I respectfully submit,
3 notwithstanding that, I don't believe counsel has a
4 right to redact any part of those grand jury minutes,
5 regardless of what they are.

6 If it's colloquy, I'm entitled to look at it.

7 Maybe grand jury had a question with respect
8 to the officer's appearance, what the officer said or
9 what the law was. Maybe he or she was confused. There
10 are a lot of issues there that counsel is blocking me
11 from considering.

12 I have never -- when I was in the District
13 Attorney's Office I gave the grand jury testimony.
14 It's what they're entitled to. I never redacted
15 anything unless it dealt with matters that were going
16 to be dealt with on trial and then I would give them a
17 separate grand jury minutes at trial containing the
18 whole grand jury minutes, but I've never seen them
19 redacted like that.

20 MS. JOHNSON: Judge, Judge Calabrese already
21 reviewed the minutes, indicated that portions were not
22 to be disclosed to defense attorney.

23 As the prosecutor, I have an obligation to
24 keep those matters secret that are not Rosario and
25 that's exactly what I've done.

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1 MR. SCHECHTER: I don't recall such a
2 direction from Judge Calabrese. Certainly, it wasn't
3 reduced to a writing.

4 THE COURT: Well, it doesn't appear,
5 Mr. Schechter, to be -- it's certainly not statements
6 made by any witness that would testify in this case.

7 It's clearly between a grand juror and the DA
8 who, I assume, is Mr. Rosenblatt?

9 MR. SCHECHTER: Yes.

10 MS. JOHNSON: Yes, Judge.

11 THE COURT: So I don't see any reason at this
12 time to unredact it, if you will, so I'm going to leave
13 it as such over your objection.

14 MR. SCHECHTER: Thank you, Judge.

15 All right, People, you want to call your
16 first witness?

17 MS. JOHNSON: Yes. Detective Leonard
18 Schulman.

19 L E O N A R D S H U L M A N, a witness called on behalf of
20 the People, having been first duly sworn by the clerk
21 of the Court, was examined and testified under oath as
22 follows:

23 COURT OFFICER: For the record, state your
24 name, spell your last name, shield number, rank and
25 command?

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1 THE WITNESS: Detective Leonard Schulman,
2 last name is, S-c-h-u-l-m-a-n, Shield 6387, assigned to
3 the 105 Precinct detective squad in Queens, New York of
4 the New York City Police Department.

5 DIRECT EXAMINATION

6 MS. JOHNSON:

7 Q. Good afternoon, detective.

8 A. Good afternoon.

9 Q. Detective, how long have you been employed by the
10 New York City Police Department?

11 A. About 15 and a half years.

12 Q. How long have you been a detective?

13 A. Almost ten years.

14 Q. Can you take us through the assignments that
15 you've worked at through your -- the course of your career?

16 A. Obviously, initially the Police Academy.

17 From there I was assigned as a patrol officer in
18 the 105 Precinct in Queens, New York. I was then assigned
19 to the -- a citywide anti-crime unit for about five years
20 and for the last seven years I've been assigned as a
21 detective in the 105 Precinct detective squad.

22 Q. What area of Queens County does the 105 cover?

23 A. It's southeast Queens. It covers many different
24 communities. It ranges all the way from the Queens side of
25 Floral Park, all the way down to Rosedale.

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Schulman - People - direct

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1 Q. I'm going to direct your attention to June 23rd
2 into the 4th of 2008.

3 Were you working on that day?

4 A. Yes, I was.

5 Q. Were you working as a detective in the 105?

6 A. Yes, I was.

7 Q. What was your tour of duty that day?

8 A. I believe I was probably working a 4:30 p.m. from
9 the night of the 23rd to 1 o'clock in the morning the
10 morning of the 24th.

11 MR. SCHECHTER: Objection. Not probably, I
12 would like to know what the officer's tour of duty was,
13 Judge.

14 THE COURT: All right, detective, is that
15 your recollection as to --

16 THE WITNESS: Yes, your Honor.

17 THE COURT: The objection is overruled.

18 MR. SCHECHTER: Is this June 23rd?

19 THE COURT: Yes, into the early morning of
20 June 24th.

21 MR. SCHECHTER: Your Honor, did I hear the
22 hours.

23 I'm sorry.

24 THE COURT: 4:30 p.m. on the 23rd to 1 a.m.
25 the morning of the 24th.

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1 Q. On June 23rd, 2008 during the course of your tour
2 did there come a time when an investigation was assigned to
3 you?

4 A. There did. I believe it was actually probably
5 about 12:30 in the morning of the morning of the 24th.

6 MR. SCHECHTER: Your Honor, once again, if
7 the officer says approximately I have no problem, but
8 when he says probably, then he's guessing.

9 THE COURT: All right, let me make the
10 following suggestion.

11 Detective, I notice you're looking at some
12 paperwork that's there.

13 Do you need to look at that to refresh your
14 recollection?

15 THE WITNESS: Only on a couple of minor
16 things. I mean, we're talking almost a year ago.

17 THE COURT: If you're going to look at any
18 paperwork, whether it's the DA or defense counsel,
19 indicate you need to look at it and what it is you're
20 looking at.

21 MR. SCHECHTER: Your Honor --

22 THE WITNESS: All right.

23 MR. SCHECHTER: Your Honor, I respectfully
24 ask the officer be asked if he has to refresh his
25 recollection then, if he does, we know he's testifying

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1 from a refreshed recollection.

2 THE COURT: I'll let you and Ms. Johnson
3 figure out how you're going to ask that.

4 Go ahead, Ms. Johnson, do you want to re-ask
5 that?

6 MS. JOHNSON: Yes.

7 Q. On June 23rd, 2008, during the course of your
8 tour, did there come a time that you received an assignment?

9 A. Yes.

10 Q. And what was the nature of the investigation that
11 you were assigned to on June 23rd of 2008?

12 A. On the early morning hours of the 24th, where I
13 was still on duty from my tour, I was notified that there
14 was a complainant in the 105 Precinct that was alleging that
15 she was a victim of a crime involving her stepfather as a
16 perpetrator and that it was of a sexual nature and that both
17 that complainant and ACS were involved in the case and that
18 an investigator was being asked to assist in the interviews.

19 THE COURT: Please lower the window?

20 Thank you.

21 Q. What was the name, not of the victim, of the
22 subject of the investigation?

23 A. I learned that the subject in the investigation's
24 name was Harold Gopaul.

25 Q. Can you tell us the circumstances of your first

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1 encounter with Harold Gopaul?

2 A. I was advised by a Sergeant O'Hagan of the
3 105 Precinct, the desk officer, that he told me that
4 Mr. Gopaul had come into the precinct and based on --
5 Sergeant O'Hagan said to me based on his knowledge of this
6 particular case, that he recognized that Mr. Gopaul was the
7 subject of the investigation and he initiated to have
8 Mr. Gopaul taken into custody and arrested downstairs in the
9 precinct.

10 Q. When were you advised Mr. Gopaul came into the
11 105 Precinct?

12 A. About 4:45 in the morning on the morning of the
13 24th.

14 Q. What were you doing at approximately 4:45 in the
15 morning on June 24th?

16 A. I was still speaking to the victim, Sana Awan.

17 THE COURT: All right, let me just step back
18 for a minute.

19 Go back to you said Officer O'Hagan --

20 THE WITNESS: Sergeant O'Hagan.

21 THE COURT: Sergeant O'Hagan.

22 He's a sergeant where?

23 THE WITNESS: The 105 Precinct.

24 THE COURT: Which is your precinct?

25 THE WITNESS: Yes. My office is upstairs on

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1 the second floor and the patrol desk is on the first
2 floor.

3 THE COURT: And he tells you that the
4 defendant has come in to indicate that he is engaged in
5 what?

6 Can you give us the time when this happens,
7 the date?

8 THE WITNESS: I'm -- I think I understand
9 you're question.

10 Sergeant O'Hagan --

11 THE COURT: Just so you understand, I'm
12 trying to get a time context of when -- you say that
13 you get notified in the early morning hours of an
14 assignment concerning a possible investigation of
15 sexual abuse.

16 THE WITNESS: That's correct.

17 THE COURT: And that comes from O'Hagan?

18 THE WITNESS: I get a call from a detective
19 at the detective bureau, Queens, alerting me there was
20 a situation downstairs in the precinct.

21 THE COURT: In your own precinct?

22 THE WITNESS: In my precinct.

23 I then contacted the sergeant downstairs who
24 provided me with some additional information and
25 enabled me to then be able to speak to the victim and

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1 the ACS worker that was in the building interviewing
2 the complainant.

3 THE COURT: Now, the victim in the building
4 at the time?

5 THE WITNESS: Yes.

6 THE COURT: And where is the defendant at
7 that time?

8 THE WITNESS: When I'm alerted?

9 He's not in the building. He comes in a few
10 hours later on his own and he walks into the precinct
11 and says who he is and that he's there looking for his
12 daughter.

13 THE COURT: Okay, go ahead.

14 Q. And do you learn this information from Sergeant --
15 from the sergeant?

16 A. Yes, I do.

17 Q. And what's his last name?

18 A. O'Hagan.

19 Q. Where -- are you still with the victim when you
20 actually hear this information from Sergeant O'Hagan?

21 A. I had stepped out from speaking to the victim. I
22 was alerted that the sergeant had something to tell me.

23 I came out of interviewing the victim and I had a
24 conversation that Mr. Gopaul had come into the precinct
25 wearing an Ecolab uniform, which is the company he, at the

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1 time, we were told, he worked for. Sergeant O'Hagan had
2 indicated that he had been informed of that information
3 earlier so when he saw the Ecolab uniform and Mr. Gopaul
4 came in and said whatever he said, that they recognized that
5 he was going to be the subject in regards to the
6 investigation that was going on at that moment.

7 Q. Did you learn from the sergeant what it was that
8 the -- that Harold Gopaul was coming to the precinct for?

9 A. Sergeant O'Hagan told me that -- based on what he
10 was telling me, that Mr. Gopaul was coming in and he was
11 looking to report his daughter Sana Awan missing, that he
12 didn't know where she was, and at that point in time once
13 they knew who he was they had -- they took him into custody
14 and arrested him.

15 Q. And do you see the person you referred to as
16 Harold Gopaul in the courtroom?

17 A. Yes, I do.

18 Q. Can you point to that person and identify an item
19 of clothing that they're wearing?

20 A. A dark-skinned male wearing, it looks like,
21 possibly a blue striped suit with a red, blue-and-white-type
22 tie at the table.

23 MS. JOHNSON: Your Honor, let the record
24 indicate the witness has identified the defendant.

25 THE COURT: Yes.

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1 Q. Where was the defendant when you came into your
2 first contact with him?

3 A. He was in an interview room in my office where I
4 had instructed one of the uniformed officers to bring him so
5 I can speak to him.

6 Q. Can you describe for us what that interview room
7 looks like?

8 A. It's -- there's a door leading into a room and the
9 room is probably ten by eight. I would speculate as to the
10 measurements, without never having measured it myself.

11 When you first walk in there is a chair in front
12 of you, there's a table that's maybe two by three feet in
13 front of the chair and then there's another chair on the
14 other side of the table.

15 THE COURT: All right, what time,
16 approximately when you meet him for the first time?

17 THE WITNESS: It's about 5:10 in the morning.

18 THE COURT: And this is in the --

19 THE WITNESS: Morning of June 24th.

20 THE COURT: In an interview room in the
21 105 Squad.

22 THE WITNESS: That's correct, Judge.

23 Q. Are there any windows in that interview room?

24 A. There's a small window on the door, maybe 14 by 14
25 or 12 by 12 right, you know, like eye level on the door.

WS

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1 Q. Who was in the room with the defendant when you
2 first got there?

3 A. He was in there by himself. And the door had been
4 secured from the outside and I opened the door and walked
5 in.

6 Q. Who was outside of the door?

7 A. I don't recall specifically. I don't want to
8 speculate. It would have been whoever the sergeant had sent
9 Mr. Gopaul up with.

10 MR. SCHECHTER: Objection as to what was
11 probable.

12 THE COURT: Yes, don't guess. If you don't
13 know just tell us.

14 THE WITNESS: Yes, I don't know specifically.

15 Q. Was it a police officer or civilian?

16 A. Police officer.

17 Q. What was the defendant doing inside that room when
18 you first entered?

19 A. He was sitting in a chair at a table.

20 Q. Was he handcuffed?

21 A. No.

22 Q. Where were his handcuffs, if you know?

23 A. Pardon me?

24 Q. Where were his handcuffs if you know?

25 A. I don't know.

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1 Q. Where was your gun when you entered the room?

2 A. It was locked up outside in my office.

3 Q. When had you locked your gun up?

4 A. When I was first apprised that Mr. Gopaul had been
5 taken into custody and was going to be brought up to be
6 interviewed in my office.

7 Q. Was the defendant sitting or standing when you
8 came -- when you went into the interview room?

9 A. Sitting.

10 Q. Was he sleeping?

11 A. No.

12 MR. SCHECHTER: Objection to the leading.

13 Q. What was he doing?

14 A. He was awake and conscious and he was just sitting
15 at the table.

16 Q. Where did you go upon entering the interview room?

17 A. I sat at the first chair on the opposite side of
18 the table of Mr. Gopaul facing him.

19 THE COURT: Okay, let me just interrupt you.

20 Could I just see both counsel?

21 (Discussion held at the bench, off the
22 record.)

23 (Pause in the proceedings.)

24 THE COURT: All right, Ms. Johnson, whenever
25 you're ready.

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1 Q. What did you say to defendant when you entered the
2 interview room?

3 A. I introduced myself, something to the effect of,
4 "I'm Detective Schulman. I'm conducting an investigation.
5 Before I can speak to you about the investigation I need to
6 read you what's called Miranda warnings before I can proceed
7 with having any other conversation with you."

8 Q. What was the defendant's response to you, if any
9 response?

10 A. I don't know initially that he said anything. I
11 think he might have just nodded his head in an okay-type
12 motion.

13 I then went on to -- you know, I had a pre-printed
14 Miranda warning form that I went on to -- you know, I
15 explained to him, "I'm going to read you these questions. I
16 need a clear and concise answer, yes or no, if you
17 understand what I'm reading to you."

18 He said okay.

19 I read him the first question of the Miranda
20 warning.

21 Mr. Gopaul acknowledged that his answer was yes,
22 that he understood.

23 I proceeded -- I mean, should -- I proceeded
24 likewise for all six questions on the Miranda form and
25 Mr. Gopaul's responses to each question was yes, he

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1 understood.

2 Q. What language were you having this conversation
3 in?

4 A. In English.

5 Q. And what language were the defendant's responses
6 in?

7 A. In English.

8 MS. JOHNSON: I'm going to ask that this be
9 marked as People's Exhibit Number 1 for identification,
10 please?

11 THE COURT: People's 1.

12 (People's Exhibit 1 marked for
13 identification.)

14 MS. JOHNSON: May I have that shown to the
15 witness, please?

16 (Shown to witness.)

17 Q. Detective Schulman, if you could take a look at
18 People's 1 for identification?

19 Do you recognize that document?

20 A. Yes, I do.

21 Q. What do you recognize that to be?

22 A. It's a photocopy of the Miranda warning sheet that
23 was used and read to Mr. Gopaul and prepared on the morning
24 of June 24th of 2008.

25 Q. How is it that you know that it was the form that

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1 was prepared with regards to this case?

2 A. The spots on the form that were prepared by me are
3 in my handwriting. I was present when Mr. Gopaul signed it
4 and I affixed my own signature as well.

5 Q. Is that a fair and accurate copy of the original?

6 A. Yes, it is.

7 MR. SCHECHTER: May I have a voir dire?

8 THE COURT: Well, could you wait until she
9 offers it?

10 MR. SCHECHTER: Yes, Judge.

11 MS. JOHNSON: I would now offer what's been
12 marked as People's 1 for identification into evidence
13 for purposes of the hearing.

14 THE COURT: You want a voir dire,
15 Mr. Schechter?

16 MR. SCHECHTER: Yes, Judge. I jumped the gun
17 a little bit.

18 VOIR DIRE EXAMINATION

19 BY MR. SCHECHTER:

20 Q. Detective Schulman, where is the original of this
21 document?

22 A. In my case folder.

23 Q. May I see it, please?

24 THE COURT: Yeah, if you have it.

25 THE WITNESS: Should I leave it in the folder

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1 or take it out?

2 THE COURT: Can you take it out without
3 having papers fly all over the place?

4 THE WITNESS: I'll do my best.

5 (Shown to counsel.)

6 Q. Now, officer, how many of these documents do you
7 have with you when you go into the room to speak to an
8 accused?

9 A. Just one.

10 Q. And when -- where did this document come from?

11 A. Can you be more specific?

12 Q. Yes, where did you get this document from?

13 A. There's a file drawer in my office where there is
14 assorted documents that we might need on any given day.

15 Q. And all those documents are the same?

16 A. Depending which drawer you look at.

17 Q. All the Miranda warning documents are the same?

18 A. To my knowledge, yes.

19 Q. They're in your drawer, correct?

20 A. Pardon me?

21 Q. They're in your drawer?

22 A. It's not my drawer, it's an office drawer.

23 Q. Office drawer, I see.

24 When you took this document out, was this document
25 blank or did it have any writing on it?

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1 A. It was blank.

2 Q. And who put the notation of 0510 on the top right
3 of the document?

4 A. When I sat down with Mr. Gopaul I did.

5 Q. So that wasn't there when you got the document?

6 A. No.

7 Q. Were there anything -- was there anything else
8 written on this document when you came into the room?

9 A. Other than the typed pre-printed information, no.

10 MR. SCHECHTER: Judge, I'm finished with voir
11 dire.

12 THE COURT: Okay, any objection?

13 MR. SCHECHTER: Not for purposes of the
14 hearing.

15 THE COURT: All right, People's 1 to be
16 received in evidence.

17 (People's Exhibit 1 received in evidence.)

18 DIRECT EXAMINATION CONT'D

19 BY MS. JOHNSON:

20 Q. Detective Schulman, can you please read for us how
21 you read the defendant his Miranda warnings on June 24th,
22 2008?

23 A. Well, as I was just describing, I initially wrote
24 0510 as to note the time that I was starting to read them.

25 I then said, "You have the right to remain silent

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1 and refuse to answer questions. Do you understand?"

2 Mr. Gopaul clearly stated yes, that he understood.

3 "Anything you do say may be used against you in a
4 court of law. Do you understand?"

5 Mr. Gopaul replied yes.

6 "You have the right to consult an attorney before
7 speaking to the police and to have an attorney present
8 during any questioning, now or in the future. Do you
9 understand?"

10 Mr. Gopaul responded yes.

11 If I could just backtrack, as Mr. Gopaul was
12 responding yes to each question I was writing his answer
13 down at each line before I proceeded to the next question.

14 THE COURT: So the yes that appears after
15 each question is your handwriting?

16 THE WITNESS: That is correct.

17 Q. And whose initials appear next to yes?

18 A. Mr. Gopaul's.

19 Q. And who wrote those initials down?

20 A. Mr. Gopaul, after the complete -- should I
21 continue reading all six questions or no?

22 Q. Yes, please.

23 A. As I was saying, I read Question 1. I asked, "Do
24 you understand?"

25 Mr. Gopaul replied yes. I wrote yes in my

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1 handwriting.

2 I read Question 2 and, again, after he responded
3 yes I wrote yes.

4 And I think I was up to Question 4, is that
5 accurate?

6 Q. Yes.

7 A. Okay, "If you cannot afford an attorney one will
8 be provided for you without cost. Do you understand?"

9 Mr. Gopaul replied yes. I wrote the answer yes.

10 "If you do not have an attorney available you have
11 the right to remain silent until you have had an opportunity
12 to consult with one. Do you understand?"

13 Mr. Gopaul responded yes. I wrote the answer yes.

14 "Now that I have advised you of your writes are
15 you willing to answer questions?"

16 Mr. Gopaul answered yes and I wrote the answer
17 yes.

18 Q. And after you marked yes who was it that initialed
19 after each question?

20 A. Well, I then said to Mr. Gopaul, "I would like you
21 to read each question yourself, make sure you understand
22 what I read to you and affirm that the yes answers you gave
23 to me are still your answers to these questions."

24 Q. Did you hand him the piece of paper?

25 A. I handed him the piece of paper, took it and

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1 looked at it, read each question and he said to me that, "My
2 yes answers to each question are still correct."

3 I asked Mr. Gopaul, "If you would, please place
4 your initials next to each yes answer you responded to me
5 and also if you would print and sign your name on the lower
6 portion of the form to indicate that you understand these
7 rights."

8 He did, he did in each place, printed and signed
9 his name on the back, handed it back.

10 I signed and affixed my shield number and then I
11 wrote the date and time that was complete.

12 Q. And is that the June 24th 2008 at 5:15 a.m.?

13 A. That is correct.

14 Q. Were any threats made to the defendant prior to
15 him signing that Miranda warning sheet?

16 A. No.

17 Q. Were any promises made to him?

18 A. No.

19 Q. Where was your gun while those Miranda warnings
20 were issued?

21 A. It was locked up outside in my office.

22 Q. At any time during the issuance of these Miranda
23 warnings did defendant ask to speak to an attorney?

24 A. No.

25 Q. At any time during the issuance of these Miranda

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1 warnings did defendant indicate he no longer wished to speak
2 to you?

3 A. No, he did not.

4 Q. Was the defendant cooperative with you?

5 A. Yes.

6 Q. Did you actually -- did you personally observe him
7 sign and print his name where it's marked defendant?

8 A. Yes, I did.

9 Q. Did he ever ask -- did he ever indicate to you he
10 had any questions for you?

11 A. No, he did not.

12 Q. After the defendant signed the Miranda warning
13 form what did you do next?

14 THE WITNESS: I'm just going to refer to my
15 notes so I have the correct order of the next form.

16 THE COURT: Do you need to look at them to
17 refresh your recollection?

18 THE WITNESS: I do, your Honor.

19 THE COURT: Could you please indicate what
20 you're referring to?

21 THE WITNESS: Absolutely, your Honor.

22 Okay, I'm referring to a complaint follow-up
23 report that I prepared.

24 THE COURT: Does it got a number?

25 THE WITNESS: It's labeled follow-up

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1 Number 3.

2 THE COURT: Do you have that, Mr. Schechter?

3 MR. SCHECHTER: As I said, your Honor, I was
4 just given these documents and I have not had a chance
5 to review them.

6 If counsel could refer them to me, then it
7 certainly will be helpful.

8 Q. Detective Schulman, are you referring to the
9 complaint follow-up informational report unapproved under
10 summary of investigation?

11 A. I'm referring to an approved copy.

12 Q. With a summary of investigation, Paragraph 1, on
13 June 24th, 2008 at approximately 4:45 hours?

14 A. That would be the report that I'm referring to.

15 MS. JOHNSON: That would be in the Rosario
16 material.

17 MR. SCHECHTER: I don't believe I have it,
18 Judge.

19 MS. JOHNSON: Page --

20 MR. SCHECHTER: Can I see the report please?

21 MS. JOHNSON: Sure.

22 (Shown to counsel.)

23 MR. SCHECHTER: I don't have that. At least
24 I don't see it.

25 If I could be given just one minute?

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1 A. I don't want to speak out of turn.

2 MS. JOHNSON: It's towards the end.

3 (Pause in the proceedings.)

4 THE WITNESS: Is it okay if I leave this
5 here?

6 THE COURT: Yes.

7 Okay, Ms. Johnson, did you have a question?

8 MS. JOHNSON: Can I continue?

9 THE COURT: Yes.

10 Q. Detective Schulman, what happened after you issued
11 the Miranda warnings to the defendant and he signed them?

12 MR. SCHECHTER: Your Honor, I'm a little
13 confused. Counsel asked the officer a question about
14 the complaint follow-up report and she said it's marked
15 unapproved and the officer answered that, no, it's
16 approved. I only got an unapproved copy so I don't
17 know what the officer is referring to here.

18 THE COURT: All right.

19 THE WITNESS: Can I explain why that is, your
20 Honor?

21 THE COURT: Yeah, could you?

22 THE WITNESS: And it's based on my
23 understanding. The computer system that the Police
24 Department was using at the time allows for us to,
25 using the computer program, type our complaint

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1 follow-up reports and then they're submitted to the
2 supervisor for approval.

3 After the supervisor approves it it no longer
4 shows the unapproved marking on it.

5 So I have the completed version which is
6 going to be consistent with the unapproved one with the
7 exception of the unapproved no longer appears.

8 THE COURT: Let me ask you this. Is it
9 identical of the unapproved one.

10 MR. SCHECHTER: I don't have a copy of the --

11 THE COURT: Mr. Schechter, would you mind if
12 I got some answers before you start interrupting me?

13 MR. SCHECHTER: I'm sorry and I do apologize.

14 THE COURT: Would it be identical to the
15 unapproved?

16 THE WITNESS: The unapproved would no longer
17 appear and the supervisor that approved this
18 information would then be tagged in.

19 THE COURT: People, what I'm going to direct
20 you to do is whatever he's referring to, make a copy of
21 it before Mr. Schechter cross-examines the detective.

22 MS. JOHNSON: That's fine, your Honor.

23 MR. SCHECHTER: Thank you, your Honor.

24 Q. Detective Schulman, is the summary of the
25 investigation in the unapproved the same as that of the

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1 approved?

2 A. It is.

3 Q. And is that what you're refreshing your
4 recollection with, the summary of the investigation?

5 A. Yes.

6 Q. Can you now tell us what happened after the
7 defendant signed that Miranda form?

8 A. Okay, I then stated to Mr. Gopaul that before I
9 could proceed that I would like to gather his consent to
10 search his work vehicle that he was in possession of and his
11 home.

12 I said, "In order for me to do that I'm going to
13 read to you a consent form that I have in order to get your
14 permission."

15 I then -- you know, while I was sitting in front
16 of Mr. Gopaul I wrote his name in the blank on the consent
17 search of the home form and I wrote in the home address and
18 who he would be authorizing if he consented to this search.

19 I then --

20 Q. I'm sorry, just to interrupt you there, was this
21 still all going on in the interview room?

22 A. Yes.

23 Q. Had anybody else come into the room at this point?

24 A. No, they had not.

25 Q. Was defendant still unhandcuffed?

WS

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1 A. Yes, he was.

2 Q. Were you still at the same desk with him?

3 A. Yes, I was.

4 Q. And was your weapon still secured?

5 A. Yes, it was.

6 Q. At that point had the defendant indicated he no
7 longer wished to speak to you?

8 A. No, he had not.

9 Q. Did he ask any questions of you?

10 A. No, he had not.

11 Q. Did he ask to speak to an attorney?

12 A. No, he had not.

13 MS. JOHNSON: I'm going to ask that this be
14 marked as People's Exhibit Number 2 for identification.

15 (People's Exhibit 2 marked for
16 identification.)

17 (Shown to witness.)

18 MS. JOHNSON: If I could have that shown to
19 the witness, please?

20 THE COURT: He's got it.

21 Q. Detective, if you could take a look at People's 2
22 for identification?

23 Do you recognize that?

24 A. Yes, I do.

25 Q. What do you recognize that to be?

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1 A. It is a photocopy of the consent search
2 pre-printed form that I had filled in a couple of blanks and
3 then read to Mr. Gopaul, to which he had given his consent
4 to search his home.

5 Q. Is that the form you were just referring to prior
6 to me marking that for identification purposes?

7 A. Yes, it is.

8 Q. And can you explain to us what the conversation
9 was with the defendant prior to him signing this consent
10 form?

11 A. I read to Mr. Gopaul the substance of the form
12 which at that point, after I had filled in a couple of
13 blanks, "That I, Harold Gopaul, having been requested to
14 consent to a search of my home located at 242-10 89th
15 Avenue, Bellerose, New York, 11426, and having been duly
16 advised of my Constitutional rights to, A, refuse such
17 consent; B, to require that a search warrant be obtained
18 prior to any search; C, that if I do consent to a search,
19 any evidence found as a result of such search can and will
20 be used against me in any civil or criminal proceedings; D,
21 that I may consult with an attorney of my choosing before or
22 during the search; and, that, E, I may withdraw my consent
23 to a search at any time prior to its conclusion.

24 I then read, "After having been advised of my
25 Constitutional rights I hereby knowingly, intelligently and

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1 voluntarily waive my above rights and consent to search. I
2 authorize Detective Schulman or authorized representative of
3 the NYPD to conduct a complete search of the above-described
4 location, premise, residence/location apartment."

5 Q. And is People's 2 for identification a fair and
6 accurate copy of the form you read to the defendant?

7 A. Yes, it is.

8 MS. JOHNSON: Your honor, I would ask that
9 for hearing purposes People's Exhibit 2 be marked into
10 evidence.

11 MR. SCHECHTER: May I see the original
12 document, your Honor, before?

13 THE COURT: Yes.

14 MR. SCHECHTER: It might obviate the
15 necessity for voir dire.

16 (Shown to counsel.)

17 THE COURT: Any objection?

18 MR. SCHECHTER: Not for the purposes of the
19 hearing, your Honor.

20 THE COURT: All right, so without objection
21 for the hearing, People's 2 will be received in
22 evidence.

23 (People's Exhibit 2 received in evidence.)

24 (Shown to witness.)

25 Q. Detective Schulman, what you just read to us, was

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1 that how you read it to the detective in the interview room?

2 A. Yes, it was.

3 Q. And what was his response to you reading that
4 consent search form?

5 A. Mr. Gopaul stated yes, he would consent.

6 I then said to him, "Well, again, I would like to
7 you read this to yourself."

8 He read it to himself and then he signed his name
9 and he put the date and time and our location on the bottom
10 of the form and handed it back to me.

11 Q. Did you observe the defendant put his signature on
12 that form?

13 A. Yes, I did.

14 Q. And who was it that actually wrote the location,
15 the date and the time?

16 A. Mr. Gopaul.

17 Q. And by that are you indicating that the defendant
18 wrote 5:20 a.m., June 24th, 2008, 105 detective squad?

19 A. Yes, I am.

20 Q. Did you observe him read this form?

21 A. Yes, I did.

22 Q. Did he have any questions for you after reading
23 it?

24 A. He did not.

25 Q. Did he ask to speak to an attorney after he read

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1 it and before he signed it?

2 A. He did not.

3 Q. Were any threats made to him prior to signing it?

4 A. No, there were not.

5 Q. Were any promises made?

6 A. No.

7 Q. Had anybody entered or left the room during the
8 time this consent form was read to the defendant?

9 A. No.

10 Q. And where was your weapon at that point?

11 A. It was still locked up outside in my office.

12 Q. Following the defendant's signing this consent
13 form marked as People's 2, what was the next conversation
14 you had with the defendant?

15 A. Well, after he signed it I signed it and then the
16 next thing I did is I said to him that, as I had priorly
17 (sic) said to him, I was going to read to him a consent to
18 search his vehicle.

19 MS. JOHNSON: Your Honor, I'll ask this be
20 marked as People's Exhibit 3 for identification.

21 (People's Exhibit 3 marked for
22 identification.)

23 (Shown to witness.)

24 Q. Detective, if you could please take a look at what
25 has been marked as People's Exhibit 3 for identification

ws

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1 purposes?

2 Do you recognize that?

3 A. Yes, I do.

4 Q. What do you recognize that to be?

5 A. This is the pre-printed consent form that I used
6 to ask Mr. Gopaul for consent to search the vehicle that he
7 was the legal custodian of at the time.

8 Q. How do you know that that's the one you used in
9 this case with this defendant?

10 A. The handwriting of the items that I filled in are
11 in my handwriting, I witnessed when it was signed and I also
12 affixed my own signature on the bottom of the form.

13 Q. Is that a fair and accurate copy of the original
14 form?

15 A. Yes, it is.

16 MS. JOHNSON: Your Honor, we would ask that
17 this be marked as People's 3 in evidence for purposes
18 of this hearing.

19 THE COURT: You're getting the original right
20 now, Mr. Schechter.

21 MR. SCHECHTER: Thank you, Judge.

22 (Shown to counsel.)

23 MR. SCHECHTER: No objection for purposes of
24 the hearing.

25 THE COURT: Without objection, People's 3 in

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1 evidence.

2 (People's Exhibit 3 received in evidence.)

3 THE COURT: Okay, Ms. Johnson.

4 (Shown to witness.)

5 Q. Detective, if you could take a look at that
6 document?

7 Could you tell us how it was that you read that
8 document to Mr. Gopaul on June 24th, 2008?

9 A. While I was sitting with Mr. Gopaul I was filling
10 in the top captions that would need to be filled in for me
11 to read it to him.

12 After that was complete I then read, "I Harold
13 Gopaul am the owner/legal custodian of a 2006 Dodge Ram
14 bearing license plate number 22726JV and VIN number
15 1D7HA16NX6J220067, which is currently located at side of the
16 105 Precinct.

17 "I have been duly advised of my rights to: One,
18 refuse such consent; two, require that a search warrant be
19 obtained prior to any search; three, that if I do consent to
20 a search, any evidence found as a result of such search can
21 and will be used against me in any criminal proceeding;
22 four, that I may withdraw my consent to search any time
23 prior to its conclusion.

24 "I knowingly, intelligently and voluntarily waive
25 my above rights and consent and authorize Detective Schulman

Schulman - People - direct

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1 or his duly authorized agent of the New York City Police
2 Department to conduct said search."

3 Q. And who signed this document?

4 A. After Mr. Gopaul indicated that he would consent
5 he again he read the form to himself and agreed that he
6 would consent. He then affixed in his own handwriting, the
7 date and time and he printed his name and he signed his name
8 and then I signed my name below as witness.

9 Q. Where it says date June 24th, 2008, time 5:30
10 a.m., is that your handwriting or the defendant's
11 handwriting?

12 A. That is Mr. Gopaul's handwriting.

13 Q. And next to the word subject where it is a printed
14 name of Harold Gopaul and then a signature, who marked that
15 printed name?

16 A. Mr. Gopaul.

17 Q. And did you observe him sign that document?

18 A. Yes, I did.

19 Q. Prior to defendant signing this were any promises
20 made to him?

21 A. No, there were not.

22 Q. Were there any threats made to him?

23 A. No.

24 Q. Any physical force used upon him?

25 A. No.

Schulman - People - direct

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1 Q. Was he still unhandcuffed?

2 A. Yes, he was.

3 Q. Had anybody -- any member of law enforcement
4 entered or left the room up until that point?

5 A. No.

6 Q. Did he indicate he wanted to speak to an attorney
7 at the time?

8 A. No, he did not.

9 Q. Did he have any questions for you?

10 A. No, did he not.

11 Q. And he indicated orally prior to signing this that
12 he wished to waive his rights and consent to this?

13 A. Yes.

14 Q. Did you observe him read over the documents?

15 A. Yes.

16 THE COURT: Detective, just to kind of put
17 this -- put some context to this, are these forms being
18 presented to him after you've now read him his Miranda
19 warnings, as you've testified?

20 THE WITNESS: That's correct.

21 THE COURT: Is there any time that's on the
22 forms or that you noted anywhere as to when these
23 events are taking place at all?

24 THE WITNESS: Yes, your Honor.

25 THE COURT: On the forms themselves?

Schulman - People - direct

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1 THE WITNESS: Yes.

2 Q. With regards to the -- I'm sorry, do you have both
3 of the documents up there for you?

4 A. Yes.

5 Q. With regards to the consent search that's been
6 marked into evidence of the home, that 5:20 a.m. time, is
7 that the time that the consent was read or the time the
8 defendant signed it?

9 A. The time that he's signing it.

10 Q. And on the consent form for the vehicle, the 5:30
11 a.m., what time does that represent, that 5:30 time?

12 A. That, again, represents the time that he is
13 signing it.

14 Q. And --

15 A. Which he actually wrote in his own handwriting
16 just prior to signing it.

17 Q. And those were both signed after the Miranda
18 warnings were issued?

19 A. That is correct.

20 Q. And after the defendant signed the Miranda form?

21 A. That's correct.

22 Q. After both of those consent forms were signed what
23 did you do?

24 A. At that moment I stepped out and took a break for
25 a little while. I had to go back and speak to the victim

Schulman - People - direct

55

1 and get some other information.

2 Q. Did there come a time when you came back into the
3 interview room to speak with the defendant?

4 A. There did.

5 Q. Approximately what time was that?

6 THE WITNESS: Again, I'm going to refer to
7 that same report, your Honor.

8 THE COURT: Okay.

9 A. It was approximately 6:20 on the morning of
10 June 24th.

11 Q. What was the defendant doing at 6:20 when you went
12 into the interview room?

13 A. He was sitting awake, and appeared coherent, in
14 the same chair that he had been sitting in with his eyes
15 open.

16 Q. Same interview room as before?

17 A. Same interview room.

18 Q. Was he handcuffed?

19 A. No, he was not.

20 Q. Was your weapon still secured?

21 A. Yes, it was.

22 Q. Was anybody else in the room?

23 A. No, they were not.

24 Q. What did you do when you went into the interview
25 room?

Schulman - People - direct

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1 A. Okay, I went in and asked Mr. Gopaul if he knew
2 why he was in custody and under arrest.

3 And he stated that, you know, on Saturday, prior,
4 he had an argument and he had to slap Sana.

5 So I asked him if he wished to, you know, to make
6 a written statement in regards to what had happened Saturday
7 and he indicated yes.

8 Q. When you say Sana you're referring to Sana Awan,
9 the complainant in this matter?

10 A. That's correct.

11 Q. Where was the victim while you were having this
12 conversation with the defendant?

13 A. She was in another interview room in my office.

14 Q. What did the defendant say to you after you asked
15 him if he would like to talk about what happened on that
16 Saturday?

17 A. Well, he then --

18 MR. SCHECHTER: Your Honor, I'm sorry to
19 interrupt the witness, your Honor, but the witness has
20 been continually reading from his documents. I'm going
21 to object because instead of it being his testimony,
22 he's reading from documents and they're not in
23 evidence.

24 THE COURT: There's times when I'm making my
25 own notes and I may not see that myself.

WS

Schulman - People - direct

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1 Detective, if you're going to look at the
2 documents just indicate you need to look at them and
3 just tell Ms. Johnson and just identify -- I'm
4 assuming, unless I hear from you differently, the
5 document -- you're referring to the document that you
6 have as approved, but our copies say unapproved?

7 THE WITNESS: Yes.

8 THE COURT: Is that what you're referring to?

9 THE WITNESS: Sometimes I'm just looking
10 down, I'm not actually look looking at it.

11 THE COURT: Okay, if you're referring to any
12 document just tell us you need to do that.

13 THE WITNESS: Yes, your Honor.

14 Q. What did the defendant say to you after you asked
15 him if he would like to talk to you about what happened on
16 Saturday?

17 A. He made that initial comment that he had an
18 argument with her on Saturday and slapped her.

19 I asked him if he would like to make a written
20 statement about that and he said yes. I then gave him a pad
21 and a pen and he was allowed to write out a statement.

22 Q. What did you say to him when you gave him the pad
23 and the pen?

24 A. Write down what happened, or something to that
25 effect, very similar to that.

Schulman - People - direct

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1 Q. And you provided him with the pad and the pen?

2 A. That's correct.

3 Q. And what did defendant do with the pad and pen?

4 A. He wrote out a statement.

5 MS. JOHNSON: I'm going to ask this be marked
6 as People's Exhibit 4 for identification.

7 THE COURT: People's 4.

8 (People's Exhibit 4 marked for
9 identification.)

10 THE COURT: Okay, Ms. Johnson?

11 MR. SCHECHTER: Can I see the original?

12 THE COURT: Are you going to be offering this
13 in evidence?

14 MS. JOHNSON: Yes, your Honor.

15 THE COURT: So why don't you give the
16 original to my officer?

17 (Shown to counsel.)

18 MR. SCHECHTER: May I have a moment, your
19 Honor?

20 THE COURT: Yes.

21 (Pause in the proceedings.)

22 MS. JOHNSON: Your Honor, there's another
23 statement I'm going to be offering, so if we could just
24 have the detective pull that out now.

25 THE COURT: Well, I'm looking at MY clock.

Schulman - People - direct

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1 Let's just deal with this one statement.

2 MS. JOHNSON: Okay.

3 (Pause in the proceedings.)

4 MR. SCHECHTER: Your Honor, I would just
5 like to say parenthetically, the copy of that statement
6 that was given to me does not contain a second page and
7 leaves out at least three or four lines on the bottom.
8 This is the first I've noticed the second page as well
9 as the bottom of that first page.

10 THE COURT: You're talking about the second
11 page?

12 MR. SCHECHTER: Of this statement.

13 THE COURT: It's a two-page statement, yes?

14 MR. SCHECHTER: Yes. I only have one page.

15 THE COURT: In terms of the Rosario material?

16 MR. SCHECHTER: In terms of my discovery
17 material, Judge.

18 THE COURT: Okay. Well, let me ask you this,
19 before we get to the parenthetical material, do you
20 have any objection to this coming into evidence?

21 MR. SCHECHTER: Not for purposes of the
22 hearing.

23 THE COURT: For purposes of the hearing.

24 MS. JOHNSON: We're talking about the
25 June 24th, 2008 statement first that was timed 6: --

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1 MR. SCHECHTER: 30.

2 MS. JOHNSON: -- 25 a.m.?

3 MR. SCHECHTER: Yes, that statement.

4 THE COURT: Detective, would you do me a
5 favor, just so the record is clear, look at what's been
6 marked People's 4 for identification and could you tell
7 us what time that statement is?

8 THE WITNESS: 6:25 a.m. on June 24th of 2008.

9 THE COURT: And how many pages is it?

10 MS. JOHNSON: It is two pages.

11 THE WITNESS: It is two pages, your Honor.

12 THE COURT: So at this point I'm going to
13 interrupt Ms. Johnson, we're going to break until
14 tomorrow.

15 MS. JOHNSON: For the uniformed officer.

16 THE COURT: For the uniformed officer.

17 MR. SCHECHTER: What is the officer's
18 commitments with respect to his return for purposes of
19 completion of the record?

20 THE COURT: I'm going to get that in a
21 minute.

22 Let me ask you this, detective, are you
23 unavailable tomorrow?

24 THE WITNESS: I am -- your Honor, actually, I
25 only got notified last minute last night about today

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1 and I didn't get home until 4 o'clock from working last
2 time and then out of courtesy for the Court I made it a
3 point of changing my schedule today, so I actually have
4 my children in the morning tomorrow.

5 THE COURT: Can you be here Monday morning?

6 THE WITNESS: Again, I'll have my children.
7 It will be a little difficult.

8 THE COURT: I don't mean to be difficult
9 myself and I understand.

10 THE WITNESS: Is there a chance we can do
11 Monday afternoon?

12 I want to work with the Court.

13 THE COURT: All right, what I'm going to do
14 is plan on being here Monday, regardless. I'll let
15 Ms. Johnson know as to whether or not I definitely need
16 you here Monday morning or afternoon.

17 MR. SCHECHTER: May I have a sidebar when
18 the officer is off the stand?

19 THE COURT: For now you are excused until
20 Monday. Make sure you take your file with you.

21 MR. SCHECHTER: Maybe you could hold him for
22 one brief second while I have a sidebar with the Court,
23 please?

24 THE COURT: Yeah, why don't you just gather
25 your stuff, detective, have a seat in the back of the

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1 courtroom.

2 (Witness steps down.)

3 (Discussion held at the bench, off the
4 record.)

5 THE COURT: Mr. Schechter, I'm going to ask
6 your client some questions relative to this application
7 for daily copy.

8 Mr. Gopaul, I'm showing you a document that I
9 believe your attorney went over with you earlier. It
10 appears to have your signature in there and it deals
11 with certain financial matters regarding your request
12 for minutes to be provided to your attorney on a daily
13 basis.

14 Is that your signature that appears there?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: And you went over this with your
17 attorney before signing it?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And everything that you -- all
20 the answers that are contained in there are true?

21 THE DEFENDANT: Yes, your Honor.

22 MR. SCHECHTER: Just so that the record is
23 clear and your Honor understands, your Honor, this
24 document -- it's his wife -- he has a business, an
25 extermination business, that's in his wife's name. He

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1 is the worker for his company and paid a salary, but
2 the wife is the owner of the company and the money that
3 is alleged there in that document is money that is in
4 the wife's name and the wife's bank accounts.

5 THE COURT: Okay, all right, so I've signed
6 it. I'll direct my reporter to provide you with daily
7 copy.

8 MR. SCHECHTER: Thank you, Judge.

9 THE COURT: Mr. Gopaul, listen to my clerk
10 for a moment.

11 THE CLERK: Mr. Gopaul, you have to appear
12 tomorrow morning.

13 If you fail to appear a warrant can be issued
14 for your arrest, you will be subject to the charge of
15 bail jumping and the case will proceed in your absence.

16 Do you understand?

17 THE DEFENDANT: Yes.

18 THE COURT: Detective, we need you to be here
19 9:30 Monday.

20 THE WITNESS: Okay.

21 THE COURT: And, you know, I was told that
22 this matter was ready to go. It's got to go from day
23 to day. Everybody has certain scheduling orders that
24 they have to follow, including myself, so we're going
25 to need you here 9:30 on Monday, okay?

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(Proceedings adjourned to Friday, March 1st,
2009 at 9:30 a.m.)

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1 SUPREME COURT OF THE STATE OF NEW YORK

2 COUNTY OF NASSAU : CRIMINAL TERM PART 80

3 -----X
4 THE PEOPLE OF THE STATE OF NEW YORK, : Indictment
: No. 2415N/08
5 -against- :
: Sex Abuse 1
6 HAROLD GOPAUL, :
: Defendant. : Huntley/Mapp
7 -----X Hearings

8 May 1, 2009

9 252 Old Country Road
10 Mineola, New York

11 B E F O R E:

12 HONORABLE JAMES P. McCORMACK,
13 Acting Supreme Court Justice

14 A P P E A R A N C E S:

15 (As previously noted.)

16 * * * * *

17
18 THE CLERK: The People against Harold Gopaul,
19 Indictment 2415N of 2008

20 MS. JOHNSON: For the People, Jamie Johnson.

21 MR. SCHECHTER: On behalf of the defendant,
22 Harold Gopaul, Donald R. Schechter, 80-02 Kew Gardens
23 Road, Kew Gardens, New York.

24 I'm ready to proceed.

25 THE COURT: People?

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1 MS. JOHNSON: Your Honor, yesterday we had
2 sent a subpoena yesterday early morning for -- and, in
3 fact, it was sent also while I wasn't at work on
4 Wednesday for Police Officer Alfaro, A-l-f-a-r-o, to
5 appear for the hearing. We had sent one subpoena for
6 her to appear at the hearing yesterday and we sent
7 another one for her to appear today.

8 I have spoken personally with police liaison
9 from the NYPD and I've spoken to police liaison from
10 Nassau County.

11 Subpoenas were sent for Officer Alfaro for
12 yesterday. They were also sent for today. I confirmed
13 this morning at 9:30 in the morning with a sergeant at
14 the 105 Precinct that they did, in fact, receive an
15 appropriate and an accurate subpoena for
16 Police Officer Alfaro.

17 However, the sergeant indicated to me that it
18 was what they call RDO, Officer Alfaro's regular day
19 off. They called her on her personal cell phone and
20 did attempt to notify her to be here not only
21 yesterday, but today.

22 She had not responded to their calls or their
23 messages when they advised her that she would be need
24 ed in court.

25 When I spoke to the sergeant this morning he

WS

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1 said that despite even contacting her, there may have
2 been an issue with overtime through the city.

3 Be that as it may, I asked about having her
4 possibly for this afternoon and then definitely for
5 Monday.

6 He advised me her next regular scheduled tour
7 is Tuesday. I told him I would be sending a subpoena
8 either way for Monday for hearing and for Tuesday as
9 well.

10 His response to me was that even if I send it
11 and they receive it, just as they had with the other
12 subpoena, most likely they would not be sending the
13 officer until Tuesday, her regularly scheduled tour
14 back.

15 They advised me they would notify her about
16 Monday once we sent the subpoena and once they received
17 it, but due to the fact that it is her scheduled day
18 off if she does not personally respond to it and for
19 overtime constraints they cannot promise me they would
20 send her before Tuesday morning.

21 THE COURT: What does the New York City
22 jurisdictions do with their cases when one of their
23 officers is off?

24 Do they just refuse to acknowledge the
25 subpoenas and not come to court or is it just because

WS

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1 it's coming out of Nassau County?

2 MS. JOHNSON: I actually asked the sergeant
3 what their procedures were for notification.

4 He said they require 24 hours notice, which
5 we did give, but 24 hours notice from their last
6 scheduled tour. So because she has not been at the
7 precinct and she has been consistently on days off,
8 they haven't seen her to actually give her the notice.

9 THE COURT: So when did she last work?

10 MS. JOHNSON: She wasn't working yesterday to
11 receive the notice.

12 THE COURT: You said you sent a subpoena on
13 Wednesday for yesterday.

14 MS. JOHNSON: It was sent Wednesday, your
15 Honor. I was not at work on Wednesday, but police
16 liaison in my office through my paralegal received it
17 and the NYPD did receive it on Wednesday for Thursday.

18 So they have not been able to get in personal
19 contact with her to advise her, since she hasn't
20 been --

21 THE COURT: I have a hard time thinking that
22 if the New York City Police Department needs to reach
23 one of their members that they're unable to reach them.

24 MS. JOHNSON: And the sergeant advised me
25 they contacted her on her cell phone. She has not

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1 answered it and she has not responded.

2 And they further indicated that other than
3 that, due to overtime constraints, they would not be
4 able to guarantee that they would, in fact, be able to
5 send her.

6 But they did say either way they have not
7 been able to reach her.

8 THE COURT: So what do you suggest?

9 MS. JOHNSON: My suggestion to your Honor
10 is --

11 THE COURT: Does the New York City Police
12 Department honor court orders any more or they don't
13 honor subpoenas?

14 Did you ask them if that would be something
15 that they would recognize?

16 MS. JOHNSON: I spoke to the sergeant who was
17 in charge of their scheduling and I asked him, I said,
18 can you continue to follow up with her?

19 He said yes, he would give her a call, but at
20 this point whatever your Honor suggests -- I would
21 absolutely make another phone call, advise them that
22 the Court has requested her presence, not just the DA's
23 Office, that this is a continued hearing in a criminal
24 case.

25 They've been aware of this, but at this point

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1 I'm at the whim of, unfortunately, the 105th Precinct
2 and the New York City Police Department.

3 THE COURT: Mr. Schechter?

4 MR. SCHECHTER: If it please the Court, the
5 105 Precinct had been informed earlier by Judge Donnino
6 in a nice way to cooperate with my investigator so my
7 investigator could get pictures of the room, the
8 interrogation room, where my client was interrogated.

9 They, for lack of a better term, jerked my
10 investigator around for the better part of a week
11 claiming that the room could not be used because the
12 room was in constant use. All we needed was three
13 minutes just to snap photographs. They refused to
14 cooperate.

15 Judge Donnino then made another call asking
16 when this could happen and they did it in a nice way
17 and just short of an order and finally last, I
18 believe -- a few days ago my investigator was finally
19 able to get access to that room called the box and got
20 pictures.

21 They have been stonewalling and I think one
22 of the reasons for stonewalling is a question of
23 jurisdiction. The point of view of the city, and I've
24 dealt with this for years already, New York City Police
25 Department says taxpayers of New York City pay their

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1 salary, that this is out of county, therefore they do
2 not want to utilize the services of the New York City
3 Police Department for out-of-county work and that is
4 why they would not be cooperating.

5 If this were a New York City case I am pretty
6 certain that the police officer, over time or not,
7 would be here.

8 My question to your Honor is, what if we were
9 on trial and we had a jury in the box and continuity --

10 THE COURT: That's my question.

11 I understand, Ms. Johnson, you're here on
12 behalf of the District Attorney of this county,
13 normally you're used to dealing with the Police
14 Department for Nassau County, but that's, quite
15 frankly, what my question is to you.

16 Would they -- have they indicated to you that
17 if the officers are not working that they will not come
18 to court even on matters that involve their own
19 jurisdiction?

20 MS. JOHNSON: They have not indicated
21 anything about that, your Honor.

22 What I would intend to do, then, is --
23 obviously we know that these witnesses are going to be
24 necessary for trial. I will advise the commanding
25 officer of what the situation is and if I have to have

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1 something in writing from them that they're going to
2 send them to give to the Court, then that's what I'll
3 do, but nobody has indicated to me that because it's a
4 Nassau County case that that's not why they're sending
5 them.

6 And, in fact, I've been in constant
7 communication with the Queen's DA and I know
8 overtime -- just as overtime is a problem out here,
9 it's no different in the city.

10 THE COURT: I understand all of the
11 jurisdictions are under, you know, budgetary
12 constraints and I'm sure New York City is not immune to
13 it either.

14 I'm just rather shocked that they would get
15 subpoenas two days in a row -- do they even give you,
16 if you will, a heads up to say don't expect this
17 officer to be here?

18 MS. JOHNSON: In fact, yesterday when we were
19 at a bench conference at the hearing I advised the
20 Court that yesterday, while I was here doing the
21 hearing, my paralegal called the city to confirm that
22 they received it and they did and there were no
23 problems. I guess we had -- them receiving it and them
24 actually having the officer here are two different
25 things for the city.

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1 But we had no indication, no phone calls,
2 that there was any problem and, in fact, this morning
3 the sergeant confirmed with me that the teletype was
4 sent appropriately, it was received within the
5 appropriate amount of time, but just that they couldn't
6 reach out to her.

7 THE COURT: All right, who is -- the sergeant
8 that you're referring to is the sergeant at the 105?

9 MS. JOHNSON: He is a sergeant at the 105
10 that when I spoke to -- when I called the precinct I
11 asked who would be in charge of speaking to somebody in
12 regard to a subpoena for an officer that's supposed to
13 come no Nassau County. I didn't catch his last name,
14 but he was in charge of, I guess, the scheduling for
15 them.

16 THE COURT: Okay, do you have a number and a
17 name that if my chambers staff should call I would be
18 able to do so?

19 MS. JOHNSON: I have it on an e-mail in my
20 office, so I do have the number you would be able to
21 contact.

22 THE COURT: All right, I'll try to see what I
23 can do.

24 MR. SCHECHTER: I understand, your Honor.

25 I'm going to respectfully ask, your Honor,

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1 that henceforth, since it appears the New York City
2 Police Department is not being cooperative here, that
3 the Court so order every subpoena with respect to the
4 New York City Police Department and make it a Court
5 order because unless your Honor threatens these people
6 with contempt, they're going to hold this court in
7 contempt, which is what they're doing now.

8 Now, I would normally be criticizing my
9 adversary for not having seen this and done this for a
10 week in advance.

11 However, counsel has been on trial up until
12 Tuesday last and needed Wednesday to basically
13 re-charge her batteries and still sent messages to her
14 paralegal to take care of this while she wasn't here.
15 So it wasn't as if there was a hiatus from her point of
16 view in terms of bad faith. So I'm not claiming bad
17 faith on the part of counsel.

18 However, because the New York City Police
19 Department appears to be contumacious in this
20 situation, I have a man here accused of a very serious
21 crime, and because they seem to be flouting the
22 subpoenas of the prosecutors of Nassau County, I don't
23 see any other basis or any other means of compelling
24 them to be here unless you threaten them with jail.
25 There's no other way to do it.

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1 THE COURT: Before we go from A to Z,
2 Mr. Schechter and start throwing adjectives around like
3 contumacious and flouting Court orders, which they
4 haven't up until now other than the DA's subpoena, I
5 would like to speak to the people in New York City to
6 find out whether or not there is any sort of budgetary
7 issue that will keep on arising during the course of
8 this case and I'll deal with it as I think appropriate.

9 MR. SCHECHTER: I appreciate the Court's
10 intercession in this matter.

11 My only concern is I remember when I was a
12 prosecutor we didn't have it as bad as it is today, but
13 certainly in situations such as this I would ask the
14 Court to so order the subpoena and tell the precinct or
15 the location if this officer doesn't come here, and the
16 courts will do that, then they suffer the penalty of me
17 considering a sanction of contempt because the New York
18 City Police Department, as most police departments,
19 it's even worse in the federal government, of course,
20 but the New York City Police Department believes many
21 times that they are above the law and that they don't
22 have to obey the orders of the Court and I'm asking the
23 Court to do that.

24 THE COURT: Mr. Schechter, your past
25 experience is of no moment to me and I'm not going to

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1 sit here and get into a bashing session of the New York
2 City Police Department because of your prior
3 experiences, whether they're justified or not, and let
4 me deal with it the way I think it's appropriate to
5 deal with. I appreciate your suggestions, but at this
6 point they're just suggestions.

7 MS. JOHNSON: Your Honor, one thing that the
8 sergeant did say to me, I don't quite know what it
9 means because I don't know what their lingo is, but I
10 did ask him if the officer was notified and you spoke
11 with her and then she failed to come to Nassau what
12 would happen. He said she would be given a CD. I
13 don't know what a CD means in NYPD terms, but obviously
14 there would have been ramifications to the officer had
15 she actually spoken to the precinct.

16 THE COURT: Let's just move on for a moment.

17 I take it that with respect to Schulman, I
18 would ask you to be in contact with him today or this
19 afternoon. I don't know whether he's working this
20 morning. It sounded like he wasn't available this
21 morning.

22 MS. JOHNSON: No, he's not working. I have
23 his cell phone number and I --

24 THE COURT: I would ask you to be in contact
25 with him, be here on Monday.

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1 My understanding is that Judge Donnino had
2 indicated to you, the DA, that after the hearing he was
3 going to give or had agreed to, if you will, a one or
4 two-day period where the case was not going to be -- in
5 other words, it wasn't going to go straight into trial.
6 It was going to be a one or two-day period, I guess,
7 for you to prepare, whatever.

8 I think in light of what's going on you may
9 have used your one or two-day period between today and
10 Monday.

11 So I would tell both of you to prepare that
12 at the conclusion of the hearing, whether it's Tuesday
13 or Wednesday morning, that we're going to be picking a
14 jury by the afternoon.

15 MR. SCHECHTER: Thank you, your Honor.

16 One other suggestion, if I might.

17 I think that the videotaped confession is
18 something -- since the Court has no familiarity with
19 this case whatsoever, the videotaped confession is
20 about a half hour.

21 Counsel, I don't believe, has done anything
22 with respect to the Miranda warnings on the video
23 confession.

24 However, if we could somehow have a mechanism
25 where that the predicate -- the predicates to the

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1 introduction of that are done, perhaps we could allow
2 the Court to see the videotape so we can get on with
3 this.

4 Because, your Honor, the videotape has within
5 it some of the things that I'm going to be talking
6 about on cross-examination. I don't know if counsel
7 has the ability today of getting any people here with
8 respect to the video confession.

9 Maybe the District Attorney in Queens County
10 can come out here and -- he was present on the video
11 and I think he is -- was present, at least, if not
12 administered the rights to my client on the video.

13 So if he can come here perhaps we could at
14 least get that done?

15 MS. JOHNSON: He's on trial. I already tried
16 that. ADA Rosenblatt actually was picking a jury
17 yesterday and I was going to have him here as a backup.
18 So he's actually on trial.

19 THE COURT: I thought you were only calling
20 two witnesses.

21 MS. JOHNSON: I am.

22 Because what counsel was saying was instead
23 of continuing with Detective Schulman for purposes of
24 the video, I could have called the Queens ADA who
25 actually is on the video, but I can't, he's on trial.

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1 I tried that already.

2 THE COURT: So you plan on calling the Queens
3 DA at all for the purpose of the hearing?

4 MS. JOHNSON: No, not at all.

5 MR. SCHECHTER: There was two, not only Jared
6 Rosenblatt, but there was another DA that --

7 MS. JOHNSON: I was going to do it if
8 Detective Schulman was completely unavailable, but he's
9 coming back.

10 THE COURT: Is Officer Schulman present in
11 the videotape?

12 MS. JOHNSON: Yes, it's two ADAs the video
13 person and the detective. So the detective is there
14 throughout the whole video.

15 THE COURT: Mr. Schechter, what I ask you to
16 do before you leave here today, give my clerk both your
17 office phone and cell phone in the event that -- we're
18 going to have Schulman here on Monday.

19 MS. JOHNSON: Correct.

20 THE COURT: Assume you're going to be here on
21 Monday.

22 MR. SCHECHTER: If that's the case, I suppose
23 we ready and pass until Monday rather than doing this
24 torturous kind of --

25 THE COURT: There's nothing we can do.

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1 The last bit of advice I'm going to give both
2 of you is whatever pretrial issues you want me to
3 decide prior to jury selection, you better get it to me
4 in writing with whatever case law you feel is
5 appropriate to back it up. I'm not going to have a
6 whole day's worth of banter back and forth about oral
7 applications because it sounded like that's what was
8 going to start happening yesterday, even though we're
9 only doing the hearing. You better get it to me in
10 writing, you better have it backed up with case law,
11 you better get it to my secretary a day or two ahead of
12 time.

13 MS. JOHNSON: I'll start working on that.

14 MR. SCHECHTER: Yes, Judge.

15 THE COURT: We'll see you -- you'll back here
16 Monday morning at 9:30.

17 MR. SCHECHTER: Yes, Judge.

18 (Proceedings adjourned to Monday, May 4th,
19 2009 at 9:30 a.m.)
20
21
22
23
24
25

1 SUPREME COURT OF THE STATE OF NEW YORK.

2 COUNTY OF NASSAU : CRIMINAL TERM PART 80

3 -----X
4 THE PEOPLE OF THE STATE OF NEW YORK, : Indictment
5 : No. 2415N/08
6 -against- :
7 HAROLD GOPAUL, : Sex Abuse 1
8 :
9 Defendant. : Huntley/Mapp
10 -----X Hearings

8 May 4, 2009

9 252 Old Country Road
10 Mineola, New York

11 B E F O R E:

12 HONORABLE JAMES P. McCORMACK,
13 Acting Supreme Court Justice

14 A P P E A R A N C E S:

15 (As Previously Noted)

16 * * * * *

17
18 THE CLERK: Continued hearing, People of the
19 State of New York against Harold Gopaul,
20 Indictment 2415N of 2008.

21 MS. JOHNSON: Good morning, Judge.

22 For the People, Jamie Johnson.

23 THE COURT: Mr. Schechter, do you want to put
24 your appearance on the record?

25 MR. SCHECHTER: On behalf of Harold Gopaul,

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1 Donald R. Schechter, 80-02 Kew Gardens Road, Kew
2 Gardens, New York.

3 Your Honor, I would like the record to
4 reflect I have made a motion in limine, a courtesy copy
5 which I gave to the Court. Since time is pressing I
6 had served the District Attorney myself in person with
7 her copy.

8 It relates to what we were discussing
9 regarding the use of any pending charged materials,
10 namely the information or charges that my client is
11 charged with in Queens County.

12 The Court of Appeals, in fact, proscribes
13 that conduct.

14 I submitted my motion to the Court and, as I
15 said, my copies to the DA and that would include a
16 redaction of the confession which the People have
17 indicated they intend to use on direct examination.

18 So those are the -- that is my motion in
19 limine.

20 The Court had asked me for case support, case
21 material, and I have supplied the Court's request.

22 THE COURT: I appreciate that. Thank you.

23 MS. JOHNSON: Your Honor, I did receive a
24 copy of this.

25 I will have a written response in response to

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1 his motion in limine along with any Molineaux by the
2 People. I'll have it filed with the clerk's office
3 today and I'll just fax over a courtesy copy to the
4 Court because I know it takes some time to get there.

5 I did also provide, I gave it to your clerk,
6 a copy of the grand jury minutes. Your Honor had
7 requested a copy of those.

8 THE COURT: Yes.

9 MS. JOHNSON: And this morning I turned over
10 additional Rosario material. I provided a copy to the
11 Court as well as counsel.

12 I haven't had a chance to put a cover on it
13 so let me, for the record -- the packet includes a
14 property clerk's invoice for a two-speed massager
15 white/gray, a property voucher for a white body
16 massager, Officer Alfaro's memo book, the actual date
17 of June 24th, 2008, along with the outside cover of the
18 memo book, the unapproved complaint report related to
19 the recovery of the property, prisoner movement slip,
20 the arrest paperwork from the NYPD, two pages, the
21 on-line booking system arrest work sheet, that's
22 several pages, some of them are double-sided, so I just
23 direct the Court's attention to that, the complaint
24 follow-up information system index sheet, the
25 detective's bureau investigation review work sheet,

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1 and, your Honor, there was testimony regarding
2 unapproved versus approved reports.

3 THE COURT: Yes.

4 MS. JOHNSON: The last three pages of this
5 are identical to the unapproved. The only difference
6 is that this is the approved version and I'll note what
7 the difference is.

8 On the last page it indicates the
9 supervisor's name, Sergeant Hanrahan, and the word
10 unapproved is missing. Other than that, the contents
11 of it is identical to what was provided last week.

12 THE COURT: And you've received that,
13 Mr. Schechter?

14 MR. SCHECHTER: Your Honor, I haven't had an
15 opportunity to peruse what she's given me nor to read
16 it. I mean, I just got it in court today.

17 One other thing, your Honor. I submitted two
18 subpoenas for the Court to sign. My investigator is
19 waiting for those. I request that those be signed
20 forthwith so I can get her out to serve them.

21 THE COURT: Right. Actually, I was going to
22 go over that next.

23 MR. SCHECHTER: I believe, your Honor, those
24 are ex parte applications. I don't think that -- since
25 the District Attorney is able to serve her subpoenas

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1 without notifying me --

2 THE COURT: I understand, but I do think that
3 there may be matters that -- in these documents that
4 may very well have some privilege or confidentiality
5 that may attach to it.

6 So I'm going to sign the subpoenas, the only
7 question -- the only direction I'm going to ask, and
8 I'll have my law secretary just make a notation on the
9 subpoena, that they get brought to my chambers so I can
10 review them in camera.

11 MS. JOHNSON: Your Honor, can I -- I don't
12 know if the Court is willing to disclose, but I would
13 just like to know what they're for.

14 MR. SCHECHTER: That's the purpose of their
15 being ex parte.

16 THE COURT: At this time I'm going to sign
17 the subpoenas.

18 MS. JOHNSON: Just so your Honor knows,
19 counsel had provided Judge Donnino, when we were before
20 him, with various subpoenas, including My Space or
21 Facebook and New York City Board of Education. I don't
22 know if those are returned to Judge Donnino as part of
23 the file, so --

24 THE COURT: I'm hearing that for the first
25 time. I'm not in possession of anything from Judge

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1 Donnino other than the court file.

2 MR. SCHECHTER: I respectfully request an
3 opportunity to review what counsel says she has given
4 me so I can respond adequately to the Court's inquiry,
5 your Honor. She's indicated she's given me some new
6 Rosario material and I haven't had, really, a chance to
7 look at it. I'm trying to arrange my file on the desk
8 and -- however, the other materials that I had
9 requested, your Honor, from counsel and from -- I asked
10 the Court direct they provide me have not been provided
11 me based upon what she said and on that basis I -- you
12 know, I have an issue with the Rosario material that
13 was requested and one of them is a mandatory report
14 that the police officer is required to submit with
15 respect to allegations of child abuse and those
16 documents I have not been given and unless he did not
17 do so, which means he violated the law, I request a
18 copy of those reports.

19 That's just one of them, Judge. There was
20 several others that I requested as well.

21 MS. JOHNSON: Well, as to first that, Judge,
22 I don't have a problem turning them over at trial, but
23 I don't see how they're Rosario for purposes of a
24 Huntley Hearing or for purposes of a Mapp Hearing.

25 One other request was there was an issue

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1 about the second page of the written statements.

2 THE COURT: Yes.

3 MS. JOHNSON: I have a copy of that and
4 unfortunately the paper that the Police Department uses
5 is bigger than 11 by 14, so the part that was missing
6 on the first page when it was Xeroxed just says to be
7 continued on the other page so I'll have copies of that
8 for counsel right now.

9 THE COURT: All right, could you also, at
10 some point, give copies for the Court because --

11 MS. JOHNSON: I will, Judge.

12 THE COURT: These are the defendants
13 so-called written statements, yes?

14 MS. JOHNSON: Yes, your Honor.

15 THE COURT: And I take it there's one page
16 from June 24th, '08 at 7:30 a.m. and that's just a
17 single page?

18 MS. JOHNSON: Yes.

19 THE COURT: And then there's a second one or
20 actually the first one from June 24th of '08 at
21 6:25 a.m.?

22 MS. JOHNSON: Yes.

23 THE COURT: And that's the two-page one?

24 MS. JOHNSON: Correct.

25 THE COURT: Which I also don't have, other

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1 than the first page.

2 MS. JOHNSON: And then there is 8:30 on June
3 24th. That is a question/answer page.

4 THE COURT: Yes, that I have.

5 MS. JOHNSON: I'm giving counsel and the
6 Court the copy of the second page.

7 Judge, when I made a copy of the first page
8 to show the bottom of it, it cuts off the top of it so
9 I'm going to use one to mark it. I'll show it to
10 counsel and if he wants me to copy it as two pages, the
11 problem is the Xerox paper just isn't big enough.

12 THE COURT: All right, could I just take a
13 look at what you have in your hand?

14 MS. JOHNSON: Sure.

15 (Shown to Court.)

16 MS. JOHNSON: Your Honor, I'll show
17 Mr. Schechter the bottom of the page. It just seems to
18 get cut off every time we copy it.

19 THE COURT: All right, Mr. Schechter, I don't
20 see any reason why we can't proceed with Detective
21 Shulman at this point. We're still in, I take it, the
22 middle of his direct or coming at the end of his
23 direct.

24 The additional Rosario material here, in
25 large part, seems to pertain to Officer Alfaro.

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1 MR. SCHECHTER: Well, I would like the
2 opportunity, prior to beginning my cross-examination of
3 Detective Shulman to review this material, your Honor.

4 THE COURT: And I intend to give that to you.

5 MR. SCHECHTER: Thank you.

6 And the other issue is the Rosario material
7 that I had named earlier on the record that I have not
8 been supplied with. I don't think we've really dealt
9 with that, Judge.

10 Now, counsel has indicated to me she was
11 going to contact the Queens District Attorney's Office
12 with respect to materials contained by him in his file
13 and I submit that's inadequate.

14 As the prosecutor in this case it is her
15 obligation to provide me with those Rosario materials
16 that I am entitled to under the law, whether or not
17 Jared Rosenblatt has them or not.

18 MS. JOHNSON: Your Honor, I spoke to the ADA
19 in Queens. He faxed me over on Thursday and Friday a
20 copy of his file that he had not yet provided to us.

21 There is handwritten notes in the file. I
22 showed them this morning to Police Officer Alfaro and
23 to Detective Shulman. They are neither of their notes.
24 They are actually the DA's work product and his
25 information and Rosario material and at this point,

Proceedings

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1 from what I can read from it, most of it has to do with
2 conversations with the complainant and his work product
3 with regards to the file.

4 THE COURT: When you say his, you're
5 referring to --

6 MS. JOHNSON: The DA in Queens. Yes, Judge.

7 MR. SCHECHTER: I would ask the Court to
8 examine the documents, your Honor, to make the
9 determination if there's Rosario issues there.

10 Additionally, it's my experience that
11 District Attorneys routinely, when they speak to
12 arresting officer or complainants, make notes on their
13 file concerning the conversations and therefore if the
14 materials are copied from Mr. Rosenblatt's file
15 regarding conversations he had with the officer who is
16 testifying now, I certainly am entitled to those.

17 So if counsel is making some representation
18 as to work product, I would like the Court to make sua
19 sponte.

20 THE COURT: Well, is this -- I thought I
21 understood you to say that these are notes that the DA
22 had with the complainant, no?

23 MS. JOHNSON: The first page, Judge, is notes
24 about the complainant and notes -- the ones that refer
25 to the detective, it appears to be work product with

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1 regard to his review of the file.

2 I'm happy to show them to the Court. Two
3 pages are completely about -- it says interview with
4 the complainant. I'll provide them to the Court now,
5 and the rest of it, other than grand jury testimony
6 that he has already provided to me, is the domestic
7 incident report, which wouldn't -- has nothing to do
8 with the Huntley or the Mapp portion, I would submit to
9 the Court, and the actual DA's -- their version -- we
10 have yellow cards in our files for notes, their version
11 of the yellow card and their ECAB paperwork that
12 references bail information, nothing about the
13 detective, but I'll happily hand that up to the Court.

14 THE COURT: One other item I think
15 Mr. Schechter had referenced last week is is there any
16 reports that got generated by anybody with regard to
17 the detective requesting any kind of commendation or
18 recognition with regard to the case itself?

19 MR. SCHECHTER: No. It would be the
20 commanding officer, after speaking to the detective,
21 would then make a recommendation.

22 THE COURT: Right, I understand.

23 MS. JOHNSON: I didn't see anything in his
24 file. I can step out, ask him and double check.

25 THE COURT: Why don't you do that?

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1 Why don't you hand me up that material so I
2 can at least take a look at that?

3 (Shown to Court.)

4 (Pause in the proceedings.)

5 THE COURT: And the answer is?

6 He doesn't know.

7 MS. JOHNSON: There was no request for
8 departmental recognition made in this case by the
9 officer or the detective.

10 THE COURT: Okay.

11 (Pause in the proceedings.)

12 MR. SCHECHTER: We also have that request for
13 the report he was supposed to mandatorily (sic) make to
14 the --

15 THE COURT: Let's see.

16 I take it, Ms. Johnson, that you don't have
17 the report that Mr. Schechter is referring to or you're
18 not aware of its existence.

19 MS. JOHNSON: I do. I believe I said there's
20 nothing in it that's relevant for purposes of the
21 hearing.

22 MR. SCHECHTER: Your Honor, I, for the life
23 of me, don't understand why prosecutors do this.
24 Rosario material, it's sort of like trial by ambush,
25 they give it to you at the last minute. --

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1 THE COURT: Mr. Schechter, before we get on
2 soap boxes and give speeches can I look at the material
3 before --

4 (Paused in the proceedings.)

5 THE COURT: Ms. Johnson, this -- the
6 documents that you handed to me, this is from the
7 Queen's Assistant DA?

8 MS. JOHNSON: Yes.

9 THE COURT: The first page, is this his notes
10 of his interview with the complainant?

11 MS. JOHNSON: I don't have another copy of
12 it, Judge, so I would have to take a look at what the
13 Court is looking at.

14 Your Honor, I'm just going to step out and
15 ask the detective to show me which is the ACS work
16 sheet because they all look alike to me.

17 THE COURT: Okay.

18 (Pause in the proceedings.)

19 THE COURT: All right, just to try to address
20 some of these Rosario materials, Mr. Schechter, the
21 packet or material Ms. Johnson gave me from the Queen's
22 Assistant DA would appear to me, for the most part to,
23 be his interview with the complainant in this case.

24 There doesn't appear to be any material, at
25 least at this time, at this stage of the hearing, that

Proceedings

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1 would be considered Rosario material. That may be
2 different as far as the trial is concerned as far as
3 the complainant is concerned. I don't see anything
4 really here that would touch upon the issues that are
5 going to be addressed at this hearing.

6 People, do you want to -- what's the other
7 material?

8 MS. JOHNSON: Yes, as to the adult and child
9 protective child services information, there was part
10 of, in one of the complaint reports, our version of a
11 crime report, there was reference to it.

12 I just stepped outside and spoke to Detective
13 Shulman. He never spoke to adult protective services.
14 In fact, he said by the time he met with the victim
15 adult protective service was already at the precinct
16 meeting with the victim, so another officer, not
17 testifying at this hearing, would have prepared that
18 paperwork and contacted ACS.

19 He did indicate he did speak with them, but
20 no paperwork was generated from him and they were
21 already there when he got there, so --

22 THE COURT: All right, and I think, having
23 myself reviewed the portion of our testimony that we've
24 had so far, he does state when the complainant does
25 come to the precinct I think an ACS worker is there, as

Proceedings

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1 a matter of fact?

2 MR. SCHECHTER: I'm sorry, your Honor?

3 THE COURT: I think in his direct testimony
4 so far Detective Shulman has testified that there was
5 an ACS worker that was present at the 105 Precinct
6 interviewing the complainant.

7 Anything else, Mr. Schechter?

8 MR. SCHECHTER: Not at this time, your Honor.

9 THE COURT: All right, so, if we could --

10 MS. JOHNSON: Let me just rev up, make sure
11 this is working.

12 THE COURT: I think, Ms. Johnson, we were at
13 People's 4?

14 MS. JOHNSON: Yes, I have that, your Honor.

15 And I believe only one page was marked, so
16 I'll put it on the record.

17 (The witness, Detective Leonard Shulman,
18 having previously been sworn, resumed the witness
19 stand.)

20 THE CLERK: Detective, you're reminded that
21 you're still under oath.

22 THE WITNESS: Yes.

23 MS. JOHNSON: May I, Judge?

24 THE COURT: Yes.

25 MS. JOHNSON: Your Honor, when we left off on

Shulman - People - direct

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1 Thursday I had asked for the June 24th, 6:25 statement
2 to be marked. It is two pages. One page was marked.
3 I just want the record to note that it is a two-page
4 document. I don't know if the Court reporter has to
5 change it on the sticker to say it's actually two
6 pages.

7 MR. SCHECHTER: May I see the document,
8 please?

9 (Shown to counsel.)

10 MS. JOHNSON: If I could have it shown to the
11 witness, please?

12 (Shown to witness.)

13 DIRECT EXAMINATION CONT'D

14 BY MS. JOHNSON:

15 Q. Detective Shulman, if you could take a look at
16 People's 4, the two-page document for identification
17 purposes, please?

18 Do you recognize that?

19 A. Yes, I do.

20 Q. What do you recognize it to be?

21 A. It is a photocopy of a two-page statement that was
22 written by Mr. Gopaul in my presence.

23 Q. Is that a fair and accurate copy of the original
24 statement that you took on June 24th, 2008?

25 A. Yes, it is.

Shulman - People - direct

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1 MS. JOHNSON: Your Honor, I would ask that
2 that be marked into evidence for purposes of the
3 hearing.

4 MR. SCHECHTER: May I have a voir dire, your
5 Honor?

6 THE COURT: Yes.

7 VOIR DIRE EXAMINATION

8 BY MR. SCHECHTER:

9 Q. Detective Shulman, that isn't a fair and accurate
10 copy of the original, is it?

11 A. Pardon me?

12 Q. That is not a fair and accurate copy of the
13 original, is it?

14 A. It's a photocopy, but it represents what the
15 original looks like.

16 Q. Did you tell the grand jury that the -- there's a
17 little scribble that happened to get written on the paper?

18 MR. SCHECHTER: I don't have a page number,
19 Judge, so I cannot refer to the page number.

20 Q. Did you tell them there's a little scribble that
21 just happened to get written on the original that's not on
22 the copy?

23 MS. JOHNSON: Which page?

24 MR. SCHECHTER: Counsel, you did not give me
25 a cover page, so I can't tell you what date it is. I

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Shulman - People - direct

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1 can't tell you what page number it is because there's
2 no page numbers on here.

3 Let me just say, in the copies on the top you
4 may want to look on the right top -- you might want to
5 look up 66. If you look in the right corner on the
6 top, 66.

7 A. I'm not sure what document you're referring me to
8 look at.

9 MR. SCHECHTER: May I approach the witness,
10 your Honor?

11 THE COURT: Yes.

12 Q. Detective Shulman, did you tell the grand jury
13 that the original had some scribble that happened to get
14 written on the paper of the original that's not on the copy.

15 Did you tell them that?

16 A. I might have, but I don't believe -- I wasn't
17 referring to the statement. There's more than one statement
18 in this case.

19 Q. Which statement were you referring to there?

20 A. Well, I believe I was speaking in regards to a
21 statement that we haven't yet come to.

22 Q. May I see the statement you've got there?

23 THE COURT: You're talking about the one
24 that's been marked?

25 MR. SCHECHTER: The one before the Court,

WS

Shulman - People - direct

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1 yeah.

2 (Shown to counsel.)

3 MR. SCHECHTER: I stand corrected. Thank
4 you, Judge. I have no more questions at this time of
5 the witness on voir dire.

6 THE COURT: Any objection for the purposes of
7 the hearing for this statement being received?

8 MR. SCHECHTER: None for the purpose of the
9 hearing, Judge.

10 THE COURT: So marked.

11 MS. JOHNSON: If I could have that marked,
12 please, your Honor?

13 (People's Exhibit 4 received in evidence.)

14 MS. JOHNSON: If I could have it shown to the
15 witness?

16 (Shown to witness.)

17 DIRECT EXAMINATION CONT'D

18 BY MS. JOHNSON:

19 Q. Detective Shulman, if you could take a look at
20 People's 4 in evidence, that two-page statement?

21 Who provided the name, address, date and time that
22 appears on that document?

23 A. Mr. Gopaul.

24 Q. Is there any part of any page of that document
25 that is in your handwriting?

Shulman - People - direct

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1 A. On Page 2 I affixed my signature indicating my
2 shield number and then I noted a date and time at the
3 conclusion of this written statement.

4 Q. Can you explain to us how it was that it came
5 about that the defendant, after being given a piece of paper
6 and a pen, wrote this statement?

7 What happened in the room?

8 A. I had explained to Mr. Gopaul that, you know, his
9 daughter had made some allegations and I got to the point I
10 asked him if he wanted to make a statement, if he wanted to
11 make a written statement.

12 He indicated he did.

13 I gave him a pad and a pen. I said, you know, "If
14 you can indicate your name, address, phone number and
15 today's date and time on the top and then if you could write
16 what your story is."

17 Q. What information did you give the defendant about
18 what his daughter had said?

19 THE WITNESS: I'm just going to refer back to
20 my complaint follow-up, your Honor, just to
21 refresh my memory?

22 A. Okay, I had asked him if he knew why he was under
23 arrest and in custody a few moments prior to this statement
24 and he said on the Saturday before he had an argument with
25 his daughter an he slapped her.

Shulman - People - direct

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1 So I then asked him if he would like to make a
2 written statement about it and upon indicating yes is when I
3 gave him an opportunity to make a written statement about
4 what had occurred.

5 Q. Did you explain to the defendant what type of
6 information should be put into this two-page document?

7 A. Other than his words about what had transpired
8 with his daughter.

9 Q. Did you watch him sign this and did you watch him
10 write it?

11 A. Yes, I did.

12 Q. Did you ask him if he wanted to make any changes?

13 A. Yes, I did.

14 Q. What did he say?

15 A. He said no.

16 Q. At any time while he was writing the statement did
17 he ask to speak to an attorney?

18 A. No, he did not.

19 Q. If you could take a look at the first page, the
20 first line of the first paragraph, where it indicates
21 Saturday, June 21st, 2008?

22 Do you see the date where it says June 21st?

23 A. Yes, I do.

24 Q. And do you see that there is a one marked over the
25 two on the 22nd?

Shulman - People - direct

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1 A. Yes, I do.

2 Q. Who made that marking?

3 A. Mr. Gopaul.

4 Q. Detective, can you read for us what has been
5 marked into evidence as People's 4?

6 THE COURT: Is that really necessary?

7 MS. JOHNSON: If your Honor --

8 THE COURT: No.

9 MS. JOHNSON: Even better. Thank you, Judge.

10 Q. At any time during the time the defendant was
11 writing the statement did he ask to speak to an attorney?

12 A. No, he did not.

13 Q. At any time did he tell you he no longer wished to
14 speak to you?

15 A. No, he did not.

16 Q. At any time did he indicate he had any questions
17 for you?

18 A. No, he did not.

19 Q. Was he cooperative with you?

20 A. Yes, he was.

21 Q. Was he handcuffed at the time?

22 A. No, he was not.

23 Q. Was your weapon still secured?

24 A. Yes, it was.

25 Q. And other than telling the defendant -- other than

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1 asking him if he wanted to make any statement was there any
2 conversation between the defendant and yourself while he was
3 actually writing?

4 A. No.

5 Q. And you observed him sign it?

6 A. Yes, I did.

7 Q. Okay. Was that the end of your contact with
8 Harold Gopaul?

9 A. No, it was not.

10 Q. What happened -- excuse me, let me step back for
11 one second.

12 Did you ask the defendant to read his statement
13 after he wrote it out?

14 A. I did.

15 Q. And was that the time you asked him if he wanted
16 to make any changes?

17 A. Yes.

18 Q. Did you observe him read the statement over?

19 A. Yes.

20 Q. Okay. What did defendant ask of you following
21 signing the statement?

22 A. He asked if he could use the restroom. I ceased
23 the interview and I brought him to the restroom.

24 Q. The restroom is outside of the interview room?

25 A. Yes, it is.

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1 Q. Was he handcuffed when he was brought to the
2 restroom?

3 A. Yes, he was.

4 Q. And where did you bring him after the restroom?

5 A. He was brought to the restroom. He was
6 unhandcuffed so he could do what he needed to do in the
7 restroom. He was then rehandcuffed and brought back to my
8 office to the interview room where the handcuffs were taken
9 off him.

10 Q. And what happened in the interview room when you
11 came back from the restroom?

12 A. Initially, I just had Mr. Gopaul sit in the
13 interview room and I took a little break from speaking to
14 him.

15 Q. Where did you go?

16 A. I believe I went to speak to the victim. I
17 probably went to my desk.

18 MR. SCHECHTER: Objection to what the officer
19 probably did, Judge.

20 THE COURT: Yeah, if you recall what you did,
21 detective -- if you're not sure just tell us.

22 THE WITNESS: I'm not 100 percent sure. I
23 know I did other things.

24 Q. You left the interview room?

25 A. Yes, I did.

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1 Q. Who was with the defendant when you left the
2 interview room?

3 A. He was by himself.

4 Q. Was there an officer outside the room?

5 A. I don't recall, but the interview room was
6 secured.

7 Q. When you left was he handcuffed?

8 A. No, he was not.

9 Q. Did he ask you for anything before you left?

10 A. No, he did not.

11 Q. Did you have any conversation with him before you
12 left?

13 A. I believe I said, "I'll be back with you in a
14 little while," or something similar to that nature.

15 Q. Did there come a time when you went back to the
16 interview room?

17 A. There did.

18 Q. Approximately what time was that?

19 A. I think it was about 7:20 or 7:25.

20 Q. What was your purpose in going back to the
21 interview room?

22 A. To continue speaking to Mr. Gopaul in regards to
23 the allegations made against him.

24 Q. What was the defendant doing when you went back
25 into the interview room?

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1 A. He was sitting in a chair facing the table in the
2 room.

3 Q. Did you sit down at the table?

4 A. Yes, I did.

5 Q. What happened?

6 A. I sat down across from Mr. Gopaul, the first chair
7 when you walk in the room again. I indicated to him that
8 his step daughter, Sana Awan, had made some allegations
9 against him that there was some activity of an inappropriate
10 nature and if he wanted to talk to me about it.

11 Q. Did you give the defendant the details of the
12 allegation?

13 A. I did not.

14 Q. Did you advise him that it was of a sexual nature?

15 THE WITNESS: If I could just refer to my
16 complaint follow-up again, your Honor?

17 THE COURT: Yes.

18 MR. SCHECHTER: Your Honor, please note my
19 objection.

20 THE COURT: I will note your objection. He
21 can look at it.

22 Go ahead.

23 A. Okay, I believe my words were that the allegation
24 was he was acting inappropriately towards her and that I was
25 not going to tell him exactly what the allegation was, but

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1 that I would give him an opportunity to discuss things if he
2 wanted to.

3 Q. Did you actually tell him you were not going to
4 give him the details of the allegation?

5 A. Yes, I did.

6 Q. What was his response to that?

7 A. That he would like to say something about it.

8 Q. What did you do after the defendant told you he
9 wanted to say something about it?

10 A. Again, I'm just referring to my notes again here
11 in the complaint follow-up.

12 MR. SCHECHTER: Excuse me, your Honor, I'm
13 sorry to interrupt, however I'm constrained to object
14 simply because the officer is not testifying from
15 memory.

16 What he is doing is parroting information he
17 plugged into a document almost a year ago, so he's
18 really not testifying, all he's doing is reading from a
19 document not in evidence, can't be in evidence and he's
20 only reading from -- this is not his testimony, this is
21 his document.

22 THE COURT: Ms. Johnson, would you like to
23 ask the officer some questions with regard to the
24 document?

25 MS. JOHNSON: Yes.

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1 Q. Detective, you can not read from a document not in
2 evidence.

3 If you wish to refresh your memory you must say so
4 and once you're done refreshing your memory with your notes
5 please look up and don't read from any documents. You must
6 testify as to what your recollection is after having your
7 memory refreshed.

8 When you went back into the room what did you do
9 after the defendant indicated he wanted to talk to you?

10 A. He said something of the nature he felt bad about
11 it and he wanted to make a statement.

12 I then gave him a note pad and a pen and again
13 said, "Here," you know, "if you could right write your name,
14 address, the date and time and you could write your
15 statement."

16 Q. Similar to the notepad you had given to him
17 before?

18 A. I believe it was the same notepad, but the
19 previous statement had been removed from the top of the
20 notepad.

21 Q. Were the pages blank?

22 A. Yes.

23 Q. What did you say to the defendant when you gave
24 him the pad and the pen?

25 A. Something of the effect of, "If you could write

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1 your name, address and phone number and the date and time on
2 the top and then write, " you know, "your statement in your
3 words as to what you want to say about this."

4 MS. JOHNSON: Your Honor, I'm going to ask
5 that this be marked as People's Exhibit 5 for
6 identification purposes?

7 THE COURT: People's 5.

8 (People's Exhibit 5 marked for
9 identification.)

10 MS. JOHNSON: Can I have People's 4 back?

11 (Shown to counsel.)

12 Q. Detective, if you could take a look at People's 5
13 for identification purposes?

14 Do you recognize that?

15 A. I do.

16 Q. What do you recognize it to be?

17 A. It is a photocopy of a statement written by
18 Mr. Gopaul.

19 Q. How do you know that?

20 A. I observed it being written and after its
21 completion I did sign my name and placed my shield number
22 and I did note the date and time on the bottom of said
23 statement.

24 Q. Is that a fair and accurate copy of the original
25 that was taken on June 24th, 2008?

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1 A. Yes.

2 MS. JOHNSON: Your Honor, we would offer
3 People's 5 in evidence for purposes of the hearing.

4 MR. SCHECHTER: Voir dire, your Honor?

5 THE COURT: Yes.

6 VOIR DIRE EXAMINATION

7 BY MR. SCHECHTER:

8 Q. I redirect your attention to your grand jury
9 testimony, detective, where you indicated at Page 66 that
10 there was some scribble written on the original that was not
11 on the copy.

12 Would you please show us where the scribble that's
13 written on the original that's not on the copy, then?

14 A. And, again, that's not -- I don't believe that's
15 pertinent to this particular one page.

16 THE COURT: Well, let me ask you this.

17 THE WITNESS: There is another page, your
18 Honor, that Ms. Johnson has not introduced yet.

19 THE COURT: But it's not People's 5?

20 THE WITNESS: It's not that page right there.

21 MR. SCHECHTER: Okay. May I have the paper,
22 please?

23 (Shown to counsel.)

24 Q. Officer, on this copy there seems to be something
25 written on the very top above Harold Gopaul's name.

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1 Could you please tell the Court what, if any --
2 what that is?

3 It's on the copy.

4 MS. JOHNSON: I think it's the staple when I
5 Xeroxed it.

6 (Shown to witness.)

7 A. It looks like a staple loop.

8 Q. Do you see the original?

9 Do you have the original there?

10 A. Yes, I have the original.

11 Q. Could you please look at the original and let me
12 know if that's on there?

13 A. It's not on the original. It's either a flaw in
14 the photocopy or the copier this was copied from had a
15 staple in it.

16 MR. SCHECHTER: May I see the original,
17 please?

18 THE COURT: Yes.

19 (Shown to counsel.)

20 MR. SCHECHTER: Thank you.

21 No more questions, Judge.

22 THE COURT: Any objection?

23 MR. SCHECHTER: Not for the purposes of the
24 hearing.

25 THE COURT: All right, so we'll receive

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1 People's 5 in evidence.

2 (People's Exhibit 5 received in evidence.)

3 MS. JOHNSON: If I could have it shown to the
4 witness, please?

5 (Shown to witness.)

6 DIRECT EXAMINATION CONT'D

7 BY MS. JOHNSON:

8 Q. Detective, if you could take a look at People's 5
9 in evidence?

10 Whose handwriting appears on that document?

11 A. With the exception of my signature and shield and
12 date and time across the bottom, Mr. Gopaul's handwriting is
13 affixed on this paper.

14 Q. On the top right-hand side where it says the date
15 and time, who provided that information?

16 A. Mr. Gopaul.

17 Q. Did you observe him write this statement?

18 A. Yes, I did.

19 Q. Was this after you had issued Miranda warnings to
20 him?

21 A. Yes, it was.

22 Q. And at this time was your gun still secured?

23 A. Yes, it was.

24 Q. Was this after the defendant went to the bathroom?

25 A. Yes, it was.

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1 Q. Was any physical force used on the defendant prior
2 to him writing this statement?

3 A. No, it was not.

4 Q. Were any threats made to the defendant prior to
5 him writing this statement?

6 A. No, there were not.

7 Q. Did you ask the defendant if he wanted to make any
8 changes to the statement?

9 A. Upon his completion of writing the statement I
10 asked him to read it over to himself and make sure it was
11 what he wanted to say and if there were any changes he
12 wanted to make he was able to.

13 THE COURT: Does that mean he did make
14 changes or he didn't make changes?

15 THE WITNESS: He didn't make changes, but he
16 was afforded an opportunity if he wanted to.

17 Q. Did you observe him reread the statement?

18 A. Yes, I did.

19 Q. Did you observe him sign it?

20 A. Yes, I did.

21 Q. And the June 24th, 2008 at 8:30 hours, what does
22 that indicate?

23 A. That was the time I was signing it as this
24 particular statement was complete.

25 Q. Was that after you observed the defendant read the

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1 statement over?

2 A. Yes, it was.

3 Q. Was that after you asked him if he wanted to make
4 any changes?

5 A. Yes.

6 Q. At any time while he was writing the statement did
7 he ask to speak to an attorney?

8 A. No, he did not.

9 Q. At any time did he indicate he no longer wished to
10 speak to you?

11 A. No, he did not.

12 Q. Was the defendant cooperative with you at this
13 time in the interview room?

14 A. Yes, he was.

15 Q. Did he ask to go to the bathroom while he was
16 signing this?

17 A. No, he did not.

18 MS. JOHNSON: I can take back People's 5.

19 (Shown to counsel.)

20 Q. After you affixed your signature to the bottom of
21 that document was that the end of your conversation with the
22 defendant?

23 A. No, it was not.

24 Q. What happened next?

25 A. Immediately after I signed the document and dated

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1 and timed on the bottom I asked him if he had any vibrators
2 in his car.

3 Q. Did you memorialize that conversation in any way?

4 A. After the question was answered.

5 Q. Can you walk us through how that conversation
6 happened?

7 A. Right after I finished that other written
8 statement I asked him if he had any vibrators in the car.

9 I believe he said that he had some vibrators in
10 his house and that he had a body massager in his car that
11 was, you know, for himself, but that he had never -- hadn't
12 used it on his daughter.

13 Q. What did you do after this conversation?

14 A. I took off the previous statement off the notepad
15 and I had another notepad. I wrote the date and time that I
16 was asking the question. I then memorialized the question I
17 had asked him and the answer he had given in reply.

18 MS. JOHNSON: Your Honor, I'll ask that this
19 be marked as People's Exhibit 6 for identification.

20 THE COURT: People's 6.

21 (People's Exhibit 6 marked for
22 identification.)

23 MS. JOHNSON: If I could have that shown to
24 the witness, please?

25 (Shown to witness.)

WS

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1 Q. Detective Shulman, take a look at People's 6 for
2 identification purposes, please.

3 Do you recognize that?

4 A. Yes, I do.

5 Q. What do you recognize it to be?

6 A. It is the -- a photocopy of the question and
7 answers that I memorialized when I was speaking to
8 Mr. Gopaul on June 24th of 2008.

9 Q. How do you know that?

10 A. It's in my handwriting and my signature appears on
11 the bottom as I had placed it.

12 Q. And is that a fair and accurate copy of the
13 original?

14 A. I mean, other than the confidential stamp that I'm
15 assuming that somebody in the DA's Office or somebody must
16 have --

17 MR. SCHECHTER: Objection to what the officer
18 assumes, please.

19 Q. Do you have the original with you, detective?

20 A. Yes, I do.

21 Q. If you could just take that out of your case
22 jacket, please?

23 MS. JOHNSON: I'll have that marked as
24 People's 6A.

25 THE COURT: Fine.

WS

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1 MS. JOHNSON: For the hearing.

2 MR. SCHECHTER: What is 6A, now?

3 MS. JOHNSON: The original.

4 THE COURT: It's the original without the
5 stamp on it.

6 (People's Exhibit 6A marked for
7 identification.)

8 Q. Detective, if you could take a look at People's 6
9 and 6A for identification purposes?

10 (Shown to witness.)

11 Q. Is People's 6 a fair and accurate copy other than
12 the stamp from the original 6A that you just took from your
13 case jacket?

14 A. Yes, it is.

15 Q. Is there anything missing from the Xerox copy that
16 is on the original?

17 A. No.

18 Q. Or vice versa, other than the stamp?

19 A. No.

20 Q. Are there any scribbles on that page that counsel
21 is referring to before?

22 A. Yes, there is.

23 Q. And is that on the original or on the copy?

24 A. It is on the original.

25 Q. Is it on the copy?

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1 A. It is on this particular copy, yes.

2 Q. And so it's a fair and accurate copy other than
3 the stamp?

4 A. Yes.

5 MS. JOHNSON: Your Honor, we would ask that
6 People's 6 be marked into evidence for purposes of the
7 hearing.

8 THE COURT: And that's the copy?

9 MS. JOHNSON: The copy, Judge.

10 MR. SCHECHTER: Voir dire, if I may, Judge?

11 THE COURT: Yes.

12 VOIR DIRE EXAMINATION

13 BY MR. SCHECHTER:

14 Q. Officer do you not recall testifying a short time
15 ago that every time I asked you a question concerning the
16 scribbles on the original that were not on the copy you had
17 stated there were other papers that -- other statements that
18 were made that had not yet been shown to you?

19 Do you recall that question and your answer?

20 A. Yes.

21 Q. Now you tell us that you -- you testified in the
22 grand jury that there was scribble on the original, but not
23 on the copy -- I'm sorry -- what are you referring to?

24 What scribble is not on the original that's on the
25 copy?

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1 A. I don't know the specific context of that
2 testimony, but I believe on the lower portion of this, I
3 guess it's number 6A, and 6, that there's a Q with a couple
4 of lines through it, that after I had completed my
5 questioning of Mr. Gopaul and had signed it, that subsequent
6 to that is when that Q and the dash had gotten written.

7 MR. SCHECHTER: I respectfully object to this
8 exhibit. I don't think this exhibit is in the same
9 condition at the time it was made.

10 THE COURT: And the basis for that is?

11 MR. SCHECHTER: Basis is his grand jury
12 testimony where he indicated that there is, and I'll
13 quote it, Judge, "I think there's a little scribble
14 that just happened to get written on the paper of the
15 original that's not on the copy."

16 I can show you the grand jury testimony if
17 the Court wishes.

18 THE COURT: I have the grand jury testimony.

19 MR. SCHECHTER: Now the officer testifies, in
20 fact, that it's on both.

21 What is he referring to?

22 THE WITNESS: I mean, if I could, your Honor?

23 MR. SCHECHTER: He said it's not on the first
24 statement, it's not on the second statement.

25 Now we got the third and it's not on there.

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1 THE COURT: All right, do you have any
2 questions, Ms. Johnson, of the detective?

3 MS. JOHNSON: I'm not done with the
4 statement.

5 THE COURT: Okay.

6 DIRECT EXAMINATION CONT'D

7 BY MS. JOHNSON:

8 Q. Detective, that scribble, the Q that's indicated
9 on that document, does that appear on your original copy?

10 A. Yes.

11 Q. Your original?

12 A. Yes.

13 Q. Can you tell us when that was put on the piece of
14 paper?

15 A. Subsequent to my completion of my interview with
16 Mr. Gopaul while I was still in my office that day.

17 Q. And what was the reason or why did you put that Q
18 on the piece of paper?

19 A. I don't know specifically. I mean -- can I say
20 what I believe I was thinking at the time?

21 MR. SCHECHTER: Objection.

22 THE COURT: Yeah, if you don't know exactly
23 why it was there, just tell us that.

24 A. I don't recall specifically why it's there.

25 Q. Was this Q on the bottom of the page marked on

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1 that piece of paper while you were in the interview room or
2 after?

3 MR. SCHECHTER: Objection, it's been asked
4 and answered. The officer already testified when he
5 put that on the paper, after the interview.

6 THE COURT: I'll allow it.

7 You can answer that.

8 A. After the interview was completed.

9 Q. While in the room with the defendant or after?

10 A. I don't recall, specifically.

11 Q. Does the top of the page on top of that scribbled
12 Q, is that part of your -- of what's marked as
13 People's Exhibit 6 and 6A, is that a fair and accurate copy
14 of your memorialization of your interview with the
15 defendant?

16 A. Absolutely.

17 Q. And which part of People's 6 or 6A was written by
18 you and which part was written by the defendant?

19 A. There's a drawing that Mr. Gopaul drew of what he
20 was describing as the vibrators that he was saying was in
21 his house, that is in his handwriting, and other than his
22 signature, the rest of the statement is in my handwriting.

23 Q. Under the picture where it narrates what the
24 picture is of, who wrote that?

25 A. I wrote that.

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1 Q. Was that in the defendant's presence?

2 A. Yes, it was.

3 Q. Did you show that to the defendant after you wrote
4 what the narrative of that picture is?

5 A. Yes, I did.

6 Q. And did you show the defendant the question and
7 answer that appeared on that document?

8 A. Yes, I did.

9 Q. And when you showed it to him did he sign
10 People's 6 or 6A?

11 A. He indicated to me that it was accurate as to the
12 question I had asked him and what his answer was and to what
13 he had drawn and what I was labelling as his drawing and
14 then he affixed his signature as him saying it was accurate.

15 Q. And did he indicate he wanted to make any changes
16 to either the question, answer or the picture?

17 A. No, he did not.

18 Q. And did you watch him sign it?

19 A. Yes, I did.

20 Q. Did you explain to the defendant how to draw the
21 picture?

22 A. No, I did not.

23 Q. What did you say to him?

24 A. He made a comment about having vibrators in the
25 house and I think I said something, "Well, can you describe

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1 what it looked like?"

2 And I think he said something similar to, "It will
3 be easier if I just draw it for you."

4 MR. SCHECHTER: Objection to what the officer
5 thinks.

6 THE COURT: Yeah, if you don't know exactly
7 what it is that he said just tell us that.

8 THE WITNESS: In sum and substance.

9 A. I don't know verbatim, but it was very similar to
10 that which is what prompted me to give him the paper and pen
11 and say, "If you want to draw it you can draw it."

12 Q. And everything that appears above your signature
13 and above the defendant's signature, was that all
14 memorialized in the defendant's presence?

15 A. Yes, it was.

16 Q. And was that all in the -- memorialized in the
17 interview room?

18 A. Yes, it was.

19 MS. JOHNSON: Your Honor, for purposes of the
20 hearing we would ask to offer that part of the
21 statement into evidence as that is the fair and
22 accurate copy as the detective testified.

23 MR. SCHECHTER: I'm still objecting, Judge,
24 on the grounds that it was altered upon the signature.

25 THE COURT: No, I'll -- I'm going to allow

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1 the entire statement over objection in evidence,
2 People's 6.

3 MR. SCHECHTER: Your Honor, would the Court
4 please note that my objection to the offer of this
5 material is continuous even throughout the trial,
6 rather than my making continual objections to it?

7 THE COURT: Yes.

8 MR. SCHECHTER: Thank you, Judge.

9 (People's Exhibit 6 received in evidence.)

10 THE COURT: You're not offering 6A in?

11 MS. JOHNSON: No.

12 MR. SCHECHTER: 6 is in evidence?

13 THE COURT: Yes, that's the copy.

14 MR. SCHECHTER: 6A is not.

15 MS. JOHNSON: Can the detective leave that in
16 his case jacket or is the Court going to need it?

17 It's marked for ID.

18 THE COURT: No, it's not being offered at
19 this time. He can leave it in his case jacket.

20 Q. Detective, who wrote the date and time on
21 People's 6 on the top right-hand corner of the document?

22 A. I did. I wrote that.

23 Q. And is that your handwriting, the question and the
24 answer?

25 A. Yes, it is.

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1 THE COURT: Just if I could interrupt,
2 detective, just with regard to if you could take out 6A
3 again and compare it to 6?

4 Is 6A a photocopy of 6?

5 THE WITNESS: Yes, it is, your Honor.

6 THE COURT: Is there anything on 6A or -- I
7 should say on 6A that is not on 6, other than the
8 stamp, the confidential stamp?

9 THE WITNESS: No, other than that they're
10 accurate.

11 Q. Detective, at any time when defendant was making
12 that drawing did he ask to speak to an attorney?

13 A. No, he did not.

14 Q. And at any time did he indicate he no longer
15 wished to speak with you?

16 A. No, did he not.

17 Q. Was he still cooperative?

18 A. Yes, he was.

19 Q. Was any force used upon this defendant prior to
20 him making that drawing?

21 A. No, there was not.

22 Q. And were any threats made upon him prior to him
23 making that drawing?

24 A. No.

25 Q. Was that the end of your contact with the

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1 defendant -- and, I'm sorry, let me just step back.

2 Had anybody walked in and out of the interview
3 room during this time?

4 A. No.

5 Q. Was that the end of your contact with the
6 defendant after People's 6 was memorialized?

7 A. I believe I interacted with him further during the
8 course of the day, but not of any substantive matter.

9 Q. What did you do next?

10 Who did you contact?

11 A. At some point in time I spoke to Police
12 Officer Alfaro. I indicated to her what the -- what the
13 statements Mr. Gopaul had made were.

14 I indicated to her that I believe there was
15 evidence in his home or his vehicle that were pertinent to
16 the case. I indicated to her that Mr. Gopaul had given me
17 written consent to search both the vehicle that he was a
18 legal custodian of and his home to recover items.

19 Q. To your knowledge, was that done?

20 A. Yes.

21 Q. And was it you or Officer Alfaro that recovered
22 the property in this matter?

23 A. Officer Alfaro recovered the evidence in this
24 case.

25 MR. SCHECHTER: Objection.

WS

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1 Q. Well, you didn't recover the evidence, right?

2 A. I was present --

3 THE COURT: Objection sustained.

4 Go ahead. You got a new question.

5 Q. Did you recover any evidence in this case?

6 A. I did not.

7 Q. Did there come a time when you contacted the
8 Queens DA's Office?

9 A. There did.

10 Q. Tell us how that happened?

11 MR. SCHECHTER: Objection.

12 Did he say they did?

13 THE WITNESS: I said I did.

14 THE COURT: All right, you contacted the DA's
15 Office.

16 Go ahead Ms. Johnson.

17 Q. What was your purpose for contacting the DA's
18 Office?

19 A. Mr. Gopaul had made statements to me. I had -- at
20 some point in time I asked him if he would be willing to
21 make a videotaped statement with the Queens District
22 Attorney's Office.

23 Q. If I could just stop you there for one moment.

24 Was it before or after the written statements were
25 given that you asked Mr. Gopaul if he wanted to make a video

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1 statement?

2 A. After.

3 Q. Was it after Miranda warnings had been issued?

4 A. Yes.

5 Q. Was it after People's 1, 2, 3, 4, 5, and 6 that
6 have been marked into evidence, was it after that time
7 frame?

8 A. Yes.

9 Q. Was it in the interview room that that
10 conversation took place?

11 A. Yes.

12 Q. Can you tell us how that came about?
13 What did you actually ask him?

14 A. I indicated to Mr. Gopaul that, if he would like,
15 that the Queens District Attorney's Office might be
16 interested in coming and speaking to him and interviewing
17 him on videotape and if that was something that he would be
18 willing to do, that I would called the District Attorney's
19 Office and make an inquiry if he was interested in doing
20 that.

21 Q. What did he say when you asked him that?

22 A. He said he would be willing to make a video
23 statement.

24 I left the interview room, leaving Mr. Gopaul in
25 the interview room, and I contacted the Queens District

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1 Attorney's Office.

2 Q. Was a video subsequently made?

3 A. Yes, it was.

4 Q. Were you present for that?

5 A. Yes, I was.

6 Q. Where was the video made?

7 A. In an interview room in my office.

8 Q. In the 105?

9 A. The 105 Precinct detective squad.

10 Q. Was it the same room that you were interviewing
11 the defendant in before?

12 A. No, it was not.

13 Q. How come?

14 A. The room that's used to make this particular video
15 at the initial time of speaking to the defendant, the victim
16 in this case, Miss Sana Awan, was in that other interview
17 room, so Mr. Gopaul was spoken to in the second interview
18 room.

19 At the time that we were going to make the video
20 Miss Sana Awan was no longer in that room, I had access to
21 that room, which also has the ability to plug in the video
22 cassette recorders and is a slightly bigger room to allow
23 room for the District Attorney, the defendant, myself and
24 the videographer.

25 Q. Can you tell us how it came about that the

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1 defendant was brought from the smaller interview room to the
2 video room?

3 A. I took Mr. Gopaul out of the smaller interview
4 room and walked him to the other interview room and asked
5 him to have a seat in the chair in the room.

6 Q. Was that before or after the DA's -- the Assistant
7 District Attorneys and the videographer had arrived at the
8 precinct?

9 A. After.

10 Q. At any time did the defendant indicate he no
11 longer wished to make a video statement?

12 A. No, he did not.

13 Q. At any time before or when the Queens DAs arrived
14 did he indicate that he wants to speak with an attorney?

15 A. No, he did not.

16 Q. Were any other officers or detectives in the video
17 room prior to the Queens DA's arriving?

18 A. No, there were not.

19 Q. Was the defendant handcuffed in the video room?

20 A. No, he was not.

21 Q. What was -- where was the defendant brought in the
22 room for when the DAs arrived?

23 Was he sitting at the table?

24 MR. SCHECHTER: Objection, multiple question
25 and she's leading, your Honor.

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1 THE COURT: Yeah, sustained.

2 Q. What was the defendant's position when the Queens
3 ADAs arrived?

4 A. He was sitting in a chair at a table in the
5 interview room.

6 Q. Who was in the room?

7 A. I was in the room and the videographer was in the
8 room.

9 Q. Is the videographer a civilian or a police
10 officer?

11 A. I believe in this case it was a police officer.

12 MR. SCHECHTER: Objection as to what the
13 officer believes, again, Judge.

14 THE COURT: Do you remember, have a
15 recollection, as to --

16 THE WITNESS: I'm pretty sure it was a
17 detective, your Honor.

18 Q. Is it a detective with your precinct?

19 A. No.

20 Q. Somebody with the DA's Office?

21 A. Yes.

22 Q. Where was your weapon when you went into that
23 room?

24 A. It was still secured in my office in my --

25 Q. To your knowledge, did the videographer have any

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1 weapons with him?

2 A. His were also secured upon his arrival prior to
3 him going into the interview room.

4 Q. Is that Police Department policy?

5 A. Yes.

6 Q. Have you had the opportunity to review that video,
7 detective, since that date?

8 A. Yes, I have.

9 MS. JOHNSON: I'm going to ask that this be
10 marked as People's Exhibit 7 for identification
11 purposes.

12 THE COURT: People's 7.

13 (People's Exhibit 7 marked for
14 identification.)

15 Q. Detective, if you could take a look at People's 7
16 for ID?

17 (Shown to witness.)

18 Q. Do you recognize that tape?

19 A. Yes, I do.

20 Q. What do you recognize it to be?

21 A. It's a videotape that I reviewed that contains a
22 substance of a video interview with Mr. Gopaul back on
23 June 24th of 2008.

24 Q. Is that a fair and accurate copy of the entire
25 interview with Mr. Gopaul in that room?

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1 A. Yes.

2 MS. JOHNSON: Your Honor, I would ask that
3 this be marked into evidence.

4 MR. SCHECHTER: May I have a voir dire?

5 THE COURT: Yes.

6 VOIR DIRE EXAMINATION

7 BY MR. SCHECHTER:

8 Q. Detective, is this a copy of the original or is
9 this the original tape that was made?

10 A. I believe it's a copy.

11 MR. SCHECHTER: Objection to what he
12 believes, your Honor.

13 THE COURT: Do you know for a fact whether
14 it's a copy or the original?

15 THE WITNESS: I didn't take the video, I
16 didn't operate the camera, so I couldn't say
17 specifically.

18 Q. How do you know that this is a videotape of the
19 interview of Mr. Gopaul?

20 A. I viewed the videotape on two occasions and
21 watched the substance of what's on the tape and it is myself
22 present in a room when Mr. Gopaul is being interviewed by
23 the Queen's District Attorney's Office.

24 Q. But you don't have that -- that tape is not on for
25 view now, so you don't know if this tape is the interview of

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1 Mr. Gopaul of your own knowledge?

2 A. Well, I believe in October of '08 when I watched
3 the video I believe in the grand jury and prior to that I
4 affixed my signature on the white tape on the side.

5 Q. Is your signature on this tape?

6 A. Yes.

7 MR. SCHECHTER: May I approach the witness,
8 Judge?

9 THE COURT: Yes.

10 Q. Please show us where your signature is on the
11 tape?

12 (Shown to witness.)

13 A. (Indicating).

14 MR. SCHECHTER: Then I have no objection for
15 the purposes of this hearing, Judge.

16 MS. JOHNSON: Your Honor, before I play
17 that --

18 THE COURT: Mark it.

19 (People's Exhibit 7 received in evidence.)

20 Q. Detective, I'm going to play what's been marked as
21 People's Exhibit 7.

22 Were Miranda warnings issued again on this tape?

23 A. Yes, they were.

24 Q. And was that done in your presence?

25 A. Yes, it was.

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1 THE COURT: Are you going to play it now?

2 MS. JOHNSON: I am, Judge, yes.

3 (Witness steps down.)

4 MS. JOHNSON: Can I have a minute, Judge?

5 THE COURT: Yes.

6 (Pause in the proceedings.)

7 (People's Exhibit 7 published at this time.)

8 (Witness resumes the stand.)

9 Q. Detective Shulman, where was the defendant brought
10 at the conclusion of that video?

11 A. Initially, I believe he stayed in that interview
12 room and at some point in time Officer Alfaro, I believe,
13 brought him downstairs and he was subsequently transported
14 to the Queens Central Booking facility.

15 Q. Was your contact with the defendant over at the
16 end of this video?

17 A. Pretty much, yes.

18 Q. At any time during the totality of your contact
19 with the defendant on June 24th, 2008 did he ever ask to
20 speak with an attorney?

21 A. No, he did not.

22 Q. Did he ever indicate to you that he did not want
23 to speak with you?

24 A. No, he did not.

25 Q. Was there ever a language barrier?

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1 A. No, there was not.

2 Q. Was there ever any force used upon him in your
3 presence?

4 A. No, there was not.

5 Q. Any threats made upon him?

6 A. No.

7 Q. Any promises made of him?

8 A. No.

9 Q. I have no other questions of Detective Shulman.

10 MR. SCHECHTER: May I have about five to
11 seven minutes to look at the Rosario material, Judge?

12 THE COURT: Actually, you can have a little
13 bit longer than that, I have to break by 12:20.

14 So why don't we pick it up at 2:15?

15 MR. SCHECHTER: 2:15?

16 Okay.

17 THE COURT: I take it by then you will have
18 had enough time to review the material?

19 MR. SCHECHTER: Yes.

20 MS. JOHNSON: Can I leave everything here,
21 Judge?

22 THE COURT: Yes.

23 We'll see everybody at 2:15.

24 (The luncheon recess was taken at this time.)

25 * * * * *

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1 A F T E R N O O N S E S S I O N

2 MR. SCHECHTER: I have Pages 2 and 3 of the
3 arrest report -- of the complaint report, but not
4 Page 1 of the complaint report. I would like to know
5 why not.

6 MS. JOHNSON: Your Honor, Page 1 of the
7 complaint report is similar to our narrative and our
8 crime reports. It reflects conversations with the
9 victim along with personal information of the victim.
10 It has nothing to do with the Huntley or Mapp.

11 If the Court would like to see it?

12 (Shown to Court.)

13 (Pause in the proceedings.)

14 THE COURT: Who is, People -- who would CV
15 stand for in this report here?

16 There's a reference to a TPO, I'm assuming
17 that's time and place of occurrence, CV walked inside?

18 MS. JOHNSON: Crime victim.

19 THE COURT: I mean, it appears,
20 Mr. Schechter, that this Page 1, the narrative portion
21 which is the only portion that is of any significance
22 at least in terms of what's said, essentially is
23 statements that the complainant, crime victim, stated
24 to, I'm assuming, police personnel.

25 MR. SCHECHTER: Well, if we can mark that a

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1 court exhibit?

2 As long as I get that in Rosario material
3 when she testifies.

4 THE COURT: Absolutely. I would think you
5 would be absolutely entitled to it.

6 MS. JOHNSON: I agree.

7 MR. SCHECHTER: Your Honor, the other thin kg
8 is on the arrest report I have one of three and I have
9 two of three, but I don't have three of three.

10 THE COURT: Is that the arrest work sheet?

11 MR. SCHECHTER: Arrest report it says here,
12 your Honor.

13 THE COURT: Is that what was handed over to
14 you this morning?

15 MR. SCHECHTER: Either this morning or on
16 Friday.

17 MS. JOHNSON: Your Honor, there is one page
18 that I showed counsel of a Page 3, it's completely
19 blank, and another page on an arrest report.

20 I don't have a Page 3 of three. I don't
21 believe one exists. I can have Detective Schulman
22 double check his case jacket. I don't have a three of
23 three. It could have been blank. I have one of three,
24 I have two of three and then when I -- next page I have
25 is the defendant's mugshot.

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1 MR. SCHECHTER: It says three pages, Judge --
2 that's one of the reasons --

3 THE COURT: I'm at somewhat of a disadvantage
4 because it's been awhile since I dealt with Rosario
5 material that gets generated, if you will, by Police
6 Department, so --

7 MS. JOHNSON: I can double check. He's right
8 outside.

9 THE COURT: Is this the online systems
10 arrest?

11 Is that what you're referring to?

12 MR. SCHECHTER: This says omni form system
13 arrest.

14 THE COURT: Right.

15 MR. SCHECHTER: On the top is written arrest
16 report, one of three.

17 THE COURT: I see that.

18 MR. SCHECHTER: And the next one also says
19 arrest report on the top and then it has my client's
20 home and cell numbers and then some information
21 underneath with Officer Alfaro's information, but it
22 says then three of three which there's no three of
23 three. I just don't know where three of three.

24 MS. JOHNSON: In fact, at the bottom of
25 Page 2 it says end of arrest report.

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1 MR. SCHECHTER: No, your Honor, if you look
2 at the other pages, if you look at the complaint
3 report, what they mean by end of complaint report they
4 mean end of complaint report for that page because in
5 the complaint report there's two of three and three of
6 three and not one of three. One of three we already
7 discussed has the complainants information, but it says
8 on the bottom end of complaint report, so I suppose no
9 one could say something was written below it, but it
10 doesn't mean it's the end of the entire report,
11 apparently. That's why it's confusing.

12 MS. JOHNSON: The opposite is true for the
13 arrest report. Bottom of Page 1 of the arrest report
14 is information and then the bottom of Page 2 says end
15 of arrest report.

16 MR. SCHECHTER: Again, same thing with Page 2
17 and 3 of the complaint report. On the bottom of Page 2
18 of the complaint report is end of complaint report and
19 the bottom of Page 3 it says end of complaint report.

20 What I'm saying to you --

21 THE COURT: Why don't we do this?

22 Let's get him on the stand. You ask him --
23 present these things to him because otherwise you're
24 asking me to figure out what this detective may have
25 generated in the way of Rosario material.

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